Pat. 136 CLERK'S COPY

65867
SB

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 95

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FIRST NATIONAL PICTURES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED APRIL 28, 1930

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 95

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FIRST NATIONAL PICTURES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from D. C. U. S., Southern New York	1	1
Petition	1	1
Exhibit A—Rules and regulations for the establishment and operations of a credit committee—Film boards of trade	49	26
Exhibit B—Credit committee questionnaire	54	29
Answer	59	31
Exhibit 1—Statement for 1927 of statistics on transfers of theatres	88	48
Exhibit 2—Standard exhibition contract dated May 1, 1928	89	48
Opinion, Thacher, J	113	64
Decree	126	72
Petition for appeal	128	73
Assignments of error	129	74
Order allowing appeal	131	75
Citation and service [omitted in printing]	132	75
Præcipe for transcript of record	134	75
Notice of præcipe, etc	135	76
Acknowledgement of service	136	76
Order approving statement of evidence	137	77
Stipulation re statement of evidence	138	77
Statement of evidence	139	78
Colloquy between court and counsel	139	78
Offers in evidence	143	81

	Original	Print
Record from D. C. U. S., Southern New York—Continued.		
Statement of evidence—Continued.		
Stipulation re certain facts	147	83
Testimony of Terese E. Drazin	153	87
John C. Douglas	156	89
Early L. Cole	206	122
Rose Mary Foley	217	130
Stipulation re exhibits	225	134
Testimony of Terese E. Drazin (recalled)	229	137
Government Exhibit 4—Material from files of Atlanta Film Board	232	139
Government Exhibit 4-A—Material from files of Atlanta Film Board	253	149
Government Exhibit 8—Material from files of Dallas Film Board of Trade	323	182
Government Exhibit 18—Material from files of Omaha Film Board of Trade	413	227
Government Exhibit 24—Report of credit committee, Dallas Film Board of Trade	530	277
Defendant's Exhibit A—Statement showing number of transfers	532	278
B—Standard exhibition contract (copy) [omitted in printing]	533	279
C—Statement showing uncompleted contracts, etc	545	279
D—Statement showing "CIR" and "FT" ratings, etc	546	280
Stipulation re transcript of record	548	281
Clerk's certificate [omitted in printing]	549	281
Order extending time	550	281
Stipulation re extension of time	551	282
Statement of points to be relied upon and designation of parts of record to be printed	552	282
Waiver of right to designate additional parts of record	558	284

1 In United States District Court Southern District of New York

---

IN EQUITY, No. 45–99

UNITED STATES OF AMERICA, PETITIONER
v.
FIRST NATIONAL PICTURES, INC., ET AL., DEFENDANTS
Petition

To the honorable judges of the District Court of the United States for the Southern District of New York

I

PARTIES

The United States of America by Charles H. Tuttle, United States attorney for the Southern District of New York, acting under the direction of the Attorney General, brings this proceeding in equity against—

Defendant distributors

1. First National Pictures, Inc., a corporation organized under the laws of the State of Deleware, and having its principal office at 383 Madison Avenue, New York, New York;
2. Paramount Famous Lasky Corporation, a corporation organized under the laws of the State of New York, and having its principal office at 1501 Broadway, New York, New York;
3. Metro-Goldwyn-Mayer Distributing Corporation, a corporation organized under the laws of the State of New York, and having its principal office at 1540 Broadway, New York, New York;
4. Universal Film Exchanges, Inc., a corporation organized under the laws of the State of Delaware, and having its principal office at 730 Fifth Avenue, New York, New York;
5. United Artists Corporation, a corporation organized under the laws of the State of Delaware, and having its principal office at 729 7th Avenue, New York, New York;
6. Fox Film Corporation, a corporation organized under the laws of the State of New York, and having its principal office at 850 Tenth Avenue, New York, New York;
7. Pathe Exchange, Inc., a corporation organized under the laws of the State of New York, and having its principal office at 35 West 45th Street, New York, New York;
8. F. B. O. Pictures Corporation, a corporation organized under the laws of the State of Delaware, and having its principal office at 1560 Broadway, New York, New York;

9. Vitagraph, Inc., a corporation organized under the laws of the State of New York, and having its principal office at 321 West 44th Street, New York, New York; and

3 10. Educational Film Exchanges, Inc., a corporation organized under the laws of the State of New York, and having its principal office at 1501 Broadway, New York, New York;

Against—

Defendant association

Motion Picture Producers and Distributors of America, Inc., hereinafter referred to as the defendant association, a membership corporation organized under the laws of the State of New York, having its principal office and place of business at 469 Fifth Avenue, New York, New York, and having a Class B membership composed of the aforesaid corporations (also made defendants hereto) each of which is engaged in the business of distributing motion-picture films, which said corporations collectively are referred to hereinafter as the defendant distributors. Said distribution of motion-picture films by said defendant distributors is done directly through branch offices maintained and operated by said defendant distributors or through wholly owned and controlled subsidiary corporations organized and operated by some of said defendant distributors to carry on such distribution for them in certain States of the United States. The number of said subsidiary corporations is so large as to make it impracticable to set forth in this petition the name of each and the State in which each operates. Each said subsidiary distributing corporation not having substantially the same name as the

4 defendant distributor by which it is owned, controlled, and operated, is specifically designated in the following list of members of defendant Film Boards of Trade.

Defendant film boards of trade

And against the hereinafter named film boards of trade (also made defendants hereto), each of which, unless otherwise specified hereinafter, is an unincorporated association organized and maintained by said defendant distributors, and by the other hereinafter named distributors of motion-picture films, and each of which has a membership composed of the branch managers (generally designated and therefore referred to hereinafter as exchange managers) of all said defendant distributors and of all or practically all other distributors of motion-picture films in the States wherein said film boards of trade are located; and against the officers and members of said defendant film boards of trade. The number of said officers and members of said defendant film boards of trade is so large that it is not practical to set forth their names in this petition. The names and addresses of said film boards of trade, the distributors of motion-picture films whose exchange managers constitute the mem-

bership of each said film board of trade, and the territory (by States and by portions of States) in which each said film board of trade operates, are as follows, to wit:

1. Film Board of Trade of Albany, having an office at 110 North Pearl Street, Albany, New York, and having a membership composed of the Albany exchange manager of each defendant distributor except defendant United Artists Corporation and of the Albany exchange manager of Tiffany-Stahl Productions, Inc. Said defendant film board operates in the northeastern part of the State of New York;

2. Atlanta Film Board of Trade, a corporation organized under the laws of the State of Georgia, having an office in the One-O-One Building, Atlanta, Georgia, and having a membership composed of the Atlanta exchange manager of each defendant distributor and of the Atlanta exchange managers of Big Feature Rights Corporation, A. C. Bromberg Attractions, Enterprise Film Corporation, Liberty-Specialty Film Distributing Corporation, and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the States of Georgia and Florida, in part of the State of Alabama, and in that part of the State of Tennessee which is east of the Tennessee River;

3. New England Film Board of Trade, having an office at 204 Stuart Street, Boston, Massachusetts, and having a membership composed of the Boston exchange manager of each defendant distributor except defendant Universal Film Exchanges, Inc., and of the Boston exchange managers of American Feature Film Company (distributor for defendant Universal Film Exchanges, Inc.), Consolidated Films, First Division Pictures, Inc., Independent Film Corporation, Motion Picture Corporation, Pictures in Motion, Inc., Royal Film Exchange, Inc., Supreme Film Corporation, Tiffany-Stahl Productions, Inc., and Royal Film Exchange. Said defendant film board operates throughout the States of Massachusetts, Vermont, New Hampshire, Maine, Rhode Island, and in part of the State of Connecticut;

4. Buffalo Film Board of Trade, having an office at 374 Delaware Avenue, Buffalo, New York, and having a membership composed of the Buffalo exchange manager of each defendant distributor and of the Buffalo exchange managers of Bond Photoplays Corporation, Chase Pictures Corporation, Dependable Distributing Corporation, First Graphic Exchange, R. C. Fox Exchanges, and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the northwestern part of the State of New York;

5. Montana Film Board of Trade, having an office in the Pennsylvania Block, Butte, Montana, and having a membership composed of the exchange manager of each defendant distributor and of the exchange managers of Greater Features, Columbia Pictures Corporation, and Western Film Corporation. Said defendant film board operates throughout the State of Montana and in the eastern and northwestern parts of the State of Idaho;

6. Charlotte Film Board of Trade, having an office at 300 West Third Street, Charlotte, North Carolina, and having a membership composed of the Charlotte exchange manager of each defendant distributor and of the Charlotte exchange mangers of A. C. Bromberg Attractions, Eltabran Film Company, Liberty-Specialty Film Distributing Corporation, and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the States of North Carolina and South Carolina;

7. Chicago Film Board of Trade, a corporation organized under the laws of the State of Illinois, having an office at 910 South Michigan Avenue, Chicago, Illinois, and having a membership composed of the Chicago exchange manager of each defendant distributor and of the Chicago exchange managers of Renown Pictures, Inc., Greiver Productions, Columbia Pictures Corporation, Progress Pictures, B. N. Judell, Inc., Security Pictures, Gotham Pictures Exchange, Reel-Craft Film Exchange, Red Seal Pictures, and Daily News Screen Service. Said defendant film board operates in the State of Illinois, in the northern part of the State of Indiana, in the southern part of the State of Wisconsin, and in the northeastern part of the State of Missouri;

8. Cincinnati Film Board of Trade, having an office at 12 East Sixth Street, Cincinnati, Ohio, and having a membership composed of the Cincinnati exchange manager of each defendant distributor and of the Cincinnati exchange managers of Fischer Film Exchange, Skirboll Gold-Seal Productions, Inc., Standard Film Service Company, Tiffany-Stahl Productions, Inc., and Big Feature Rights Corporation. Said defendant film Board operates in the southern part of the State of Ohio, in the State of Kentucky, and in the western part of the State of West Virginia;

9. Cleveland Film Board of Trade, having an office in the Film Exchange Building, Cleveland, Ohio, and having a membership composed of the Cleveland exchange manager of each defendant distributor and of the Cleveland exchange managers of Standard Film Service Company, Skirboll-Gold Seal Productions, Inc., Fischer Film Exchange Company, and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the northern part of the State of Ohio;

10. Dallas Film Board of Trade, having an office at 2009½ Jackson Street, Dallas, Texas, and having a membership composed of the Dallas exchange manager of each defendant distributor and of the Dallas exchange managers of Tiffany-Stahl Productions, Inc., Home State Film Company, and Liberty-Specialty Film Distributing Corporation. Said defendant film board operates throughout the State of Texas and in part of the State of Oklahoma;

11. Denver Film Board of Trade, having an office in the Midland Savings Building, Denver, Colorado, and having a membership composed of the Denver exchange manager of each defendant distributor

and of the Denver exchange managers of Columbia Pictures
9 Corporation, Atlas Film Exchange, and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the States of Colorado and New Mexico, in part of the State of Wyoming, in the western part of the State of Nebraska, and in the western part of the State of South Dakota;

12. Des Moines Film Board of Trade, having an office in the Iowa Building, Des Moines, Iowa, and having a membership composed of the Des Moines exchange manager of each defendant distributor, except defendants Vitagraph, Inc., and United Artists Corporation, and of the Des Moines exchange manager of Columbia Pictures Corporation. Said defendant film board operates throughout the State of Iowa;

13. Detroit Film Board of Trade, Inc., a corporation organized under the laws of the State of Mich'gan, having an office at 302 Film Exchange Building, Detroit, Michigan, and having a membership composed of the Detroit exchange manager of each defendant distributor and of the Detroit exchange manager of Columbia Pictures Corporation, Crescent Pictures Exchange, Favorite Film Company, Standard Film Service Company, Tiffany-Stahl Productions, Inc., and W. D. Ward Productions. Said defendant film board operates throughout the State of Michigan;

14. Indianapolis Film Board of Trade, a corporation organized under the laws of the State of Indiana, having an office in the Chamber of Commerce Building, Indianapolis, Indiana, and having
10 a membership composed of the Indianapolis exchange manager of each defendant distributor and of the Indianapolis exchange managers of Big Feature Rights Corporation, Midwest Film Company, Red Seal Film Exchange, Security Pictures, and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the State of Indiana;

15. Kansas City Film Board of Trade, a corporation organized under the laws of the State of Missouri, having an office at 1717 Wyandotte Street, Kansas City, Missouri, and having a membership composed of the Kansas City exchange manager of each defendant distributor and of the Kansas City exchange managers of Enterprise Film Corporation, Tiffany-Stahl Productions, Inc., and Midwest Film Distributors, Inc. Said defendant film board operates throughout the State of Kansas and in the western part of the State of Missouri;

16. Los Angeles Film Exchange Board of Trade, a corporation organized under the laws of the State of California, having an office in the Film Exchange Building, Washington & Vermont Streets, Los Angeles, California, and having a membership composed of the Los Angeles exchange manager of each defendant distributor and of the Los Angeles exchange managers of All Star Feature Distributing Corporation, Tiffany-Stahl Productions, Inc., and

Columbia Exchanges, Inc. Said defendant film board operates in the southern part of the State of California and throughout the State of Arizona;

11

17. Milwaukee Film Board of Trade, a corporation organized under the laws of the State of Wisconsin, having an office at 216 West Water Street, Milwaukee, Wisconsin, and having a membership composed of the Milwaukee exchange manager of each defendant distributor and of the Milwaukee exchange managers of Celebrated Players Corporation, Mid-West Distributing Corporation, Red Seal Film Exchange, Progress Pictures Company, Ludwig Film Exchange, Tiffany-Stahl Productions, Inc., and Columbia Pictures Corporation. Said defendant film board operates throughout the State of Wisconsin and in the southeastern part of the State of Minnesota;

18. Memphis-Little Rock Film Board of Trade, having an office at 103 South Second Street, Memphis, Tennessee, and having a membership composed of the Memphis and/or Little Rock exchange manager of each defendant distributor, except defendants United Artists Corporation, Vitagraph, Inc., and Educational Film Exchanges, Inc., and of the Memphis and/or Little Rock exchange managers of Big Features Rights Corporation, Home State Film Company, and Liberty-Specialty Film Distributing Corporation. Said defendant film board operates throughout the States of Tennessee and Arkansas and in the northern part of the State of Mississippi;

12

19. Minneapolis Film Board of Trade, Inc., a corporation organized under the laws of the State of Minnesota, having an office in the Film Exchange Building, Minneapolis, Minnesota, and having a membership composed of the Minneapolis exchange manager of each defendant distributor and of the Minneapolis exchange managers of Columbia Pictures Corporation, Friedman Film Corporation, Premier Film Exchange, and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the States of Minnesota, North Dakota, and South Dakota and in the western part of the State of Wisconsin;

20. New Haven Film Board of Trade, having an office at 134 Meadow Street, New Haven, Connecticut, and having a membership composed of the New Haven exchange manager of each defendant distributor and of the New Haven exchange managers of Fitz Film Exchange, Independent Films, Inc., and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the State of Connecticut;

21. New Orleans Film Board of Trade, having an office in the New Orleans Bank Building, New Orleans, Louisiana, and having a membership composed of the New Orleans exchange manager of each defendant distributor, except defendant United Artists Corporation, and of the New Orleans Exchange managers of A. C.

Bromberg Attractions, Enterprise Distributing Corporation,
13 and Liberty-Specialty Film Distributing Corporation. Said defendant film board operates throughout the State of Louisiana, in the southern part of the State of Mississippi, in the western part of the State of Alabama, and in the northwestern part of the State of Florida.

22. New York Film Board of Trade, having an office at 1560 Broadway, New York, New York, and having a membership composed of the New York exchange manager of each defendant distributor, except Universal Film Exchanges, Inc., and of the New York Exchange managers of Aywon Film Corporation, Big U Film Exchange, Inc. (subsidiary of defendant Universal Film Exchanges, Inc.), Capital Film Exchange, Inc., Commonwealth Film Corporation, Hollywood Pictures Corporation, Merit Film Corporation, First Division Pictures, Inc., Producers Distributing Corporation, Red Seal Pictures, Inc., and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the southern part of the State of New York and in the northern part of the State of New Jersey;

23. Oklahoma City Film Board of Trade, having an office in the Security Building, Oklahoma City, Oklahoma, and having a membership composed of the Oklahoma City exchange manager of each defendant distributor, except defendant United Artists Corporation, and of the Oklahoma City exchange managers of Home State Film Company and Liberty Specialty Film Distributing
14 Corporation. Said defendant film board operates throughout the State of Oklahoma and in the northern part of the State of Texas;

24. Omaha Film Board of Trade, Inc., a corporation organized under the laws of the State of Nebraska, having an office in the Medical Arts Building, Omaha, Nebraska, and having a membership composed of the Omaha exchange manager of each defendant distributor and of the Omaha exchange managers of Columbia Pictures Corporation, Liberty Film Exchange, and Renown Pictures, Inc. Said defendant film board operates throughout the State of Nebraska and in the western part of the State of Iowa;

25. Philadelphia Film Board of Trade, having an office at 1337 Vine Street, Philadelphia, Pennsylvania, and having a membership composed of the Philadelphia exchange manager of each defendant distributor and of the Philadelphia exchange managers of Columbia Pictures Corporation, DeLuxe Film Company, Inc., Liberty Film Company, Masterpiece Film Attractions, Penn Productions, Inc., and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the eastern part of the State of Pennsylvania and in the southern part of the State of New Jersey;

26. Pittsburgh Film Board of Trade, having an office at 335 Fifth Avenue, Pittsburgh, Pennsylvania, and having a membership composed of the Pittsburgh exchange manager of each defendant
15 distributor and of the Pittsburgh exchange managers of Columbia Pictures Corporation, Columbia Film Service, Fed-

erated Film Exchange, and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the western part of the State of Pennslyvania and in the eastern part of the State of West Virginia;

27. Portland Film Board of Trade, having an office in the Board of Trade Building, Portland, Oregon, and having a membership composed of the Portland exchange manager of each defendant distributor and of the Portland exchange managers of Star Film Exchange, Greater Features, Inc., Columbia Pictures Corporation, and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the State of Oregon;

28. St. Louis Film Board of Trade, having an office at 3312 Olive Street, St. Louis, Missouri, and having a membership composed of the St. Louis exchange manager of each defendant distributor and of the St. Louis exchange managers of Columbia Pictures Corporation, Gotham Pictures Exchange, and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the eastern part of the State of Missouri and in the southern part of the State of Illinois;

29. Inter-Mountain Film Board of Trade of Salt Lake City, Utah, a corporation organized under the laws of the State of Utah, having an office in the Continental Bank Building, Salt Lake
16 City, Utah, and having a membership composed of the Salt Lake City exchange manager of each defendant distributor and of the Salt Lake City exchange managers of Columbia Pictures Corporation and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the State of Utah, in the southern part of the State of Idaho and in the western part of the State of Wyoming;

30. San Francisco Film Exchange Board of Trade, a corporation organized under the laws of the State of California, having an office at 25 Taylor Street, San Francisco, California, and having a membership composed of the San Francisco exchange manager of each defendant distributor and of the San Francisco exchange managers of Columbia Film Exchanges, Inc., and Tiffany-Stahl Productions, Inc. Said defendant film board operates in the northern part of the State of California and throughout the State of Nevada;

31. Northwest Film Board of Trade, Incorporated, a corporation organized under the laws of the State of Washington, having an office in the Securities Building, Seattle, Washington, and having a membership composed of the Seattle exchange manager of each defendant distributor and of the Seattle exchange managers of Columbia Film Exchanges, Inc., Tiffany-Stahl Productions, Inc., Greater Features, Inc., and Western Film Corporation. Said
17 defendant film board operates throughout the State of Washington and the Territory of Alaska; and

32. Washington Film Board of Trade, a corporation organized under the laws of the District of Columbia, having an office at 805 Fifth Street, Washington, District of Columbia, and having a

membership composed of the Washington exchange manager of each defendant distributor and of the Washington exchange managers of Columbia Pictures Corporation, Federal Film Service, Trio Productions, Inc., and Tiffany-Stahl Productions, Inc. Said defendant film board operates throughout the district of Columbia and the States of Maryland and Virginia.

For its cause of action your petitioner alleges:

II

PURPOSE OF PETITION

This petition is brought under the provision of section 4 of the act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), known as the Sherman antitrust act, to prevent and to restrain the aforesaid defendants from further engaging, in this District and elsewhere in the United States, in violation of section 1 of the said act of Congress, in the conspiracy in restraint of interstate trade and commerce in motion-picture films, which is hereinafter more particularly described.

18

III

DESCRIPTION OF INDUSTRY

1. Production of motion pictures

For many years last past motion pictures have been made and produced in motion-picture studios in the State of California and elsewhere by photographing scenes on reels of negative stock celluloid film, which said exposed negative films have been developed, fixed, cut, and arranged in said studios and then have been shipped to laboratories at which positive prints thereof have been made. These positive prints are hereinafter referred to as motion-picture films. They are the films which are run through motion-picture machines which project the pictures photographed on the films on screens and thereby reproduce on such screens photoplays and other forms of motion-picture entertainment which generally are designated and therefore are referred to hereinafter as motion pictures.

2. Exhibition life of films

Each said motion-picture film is capable of approximately three hundred projections from a motion-picture machine, and has an exhibition life of approximately sixty days. After that amount of use each said film is scrapped.

3. Classification of motion pictures

Motion pictures are classified as features, short subjects, and news reels. A feature picture is a motion picture photographed on six reels or more of motion-picture film. A short subject is a motion picture photographed on less than six reels of motion-picture
19 film. Short subjects generally are comedies, animated cartoons, travel pictures, and other forms of motion-picture entertainment designed to supplement a feature picture on a complete motion-picture program. News reels are photographs of current events of interest throughout the world, which are taken and prepared for the purpose of being distributed at regular intervals, weekly or semiweekly to supplement feature films and short subjects and to complete motion-picture programs.

4. Complete program distribution

For many years most motion-picture distributors specialized in the distribution of one of the aforesaid classes of motion-picture films, but at the present time and for approximately one year last past several of the defendant distributors of motion-picture films have distributed feature films, short subjects, and news reels in order to be able to supply exhibitors with complete programs.

5. Channel of distribution

The defendant distributors are engaged in the business of distributing to motion-picture theatres throughout the United States the aforesaid motion-picture films produced by themselves or by subsidiary or affiliated producing corporations, or produced by other producers of motion-picture films who are not distributors thereof.

6. Motion-pictures theatres

There are approximately 22,000 motion-picture theatres in the United States at which motion pictures are exhibited for the entertainment of the public. Said motion-picture theatres are classified as first run and as subsequent run houses, depending on
20 whether each first exhibits motion pictures in the city in which it is located, or whether it exhibits motion pictures after they have been shown one or more times in the same city. Approximately fifty per cent of the total receipts of motion-picture distributors from motion-picture exhibitors as rentals for motion-picture films is obtained under contracts for such first-run showings at said first-run theatres.

7. Film exchanges

Each defendant distributors maintains exchanges in the principal centers of distribution in the United States for the purpose of facili-

tating the distribution of its said motion-picture films, and, except as heretofore stated, each said distributors maintains such an exchange in each city in which one of the defendant film boards of trade is located.

The States and portions of States heretofore designated as the territory in which each said film board of trade operates approximately coincide with the States and portions of States comprising the territory in which the members of such film board of trade distribute motion-picture films.

8. Control by defendants

The defendant distributors distribute approximately 60 per cent of the motion-picture films distributed annually in the United States. The membership of each defendant film board of trade represents practically every distributor of motion-picture films in the territory for which that film board operates. The members of
21 the defendant film boards distribute approximately 98 per cent of the motion-picture films distributed annually in the United States. It is impossible for any motion-picture theatre to secure sufficient motion-picture films for its regular operation without dealing with one or more members of the defendant film board of trade in the territory in which said theatre is located.

IV

SCOPE OF AUTHORITY OF MEMBERS OF FILM BOARDS

During all the time herein mentioned each said exchange manager who has been or who now is a member of any defendant film board of trade has been or now is authorized and empowered by his principal (whether one of said defendant distributors or another person, corporation, or copartnership engaged in the business of distributing motion-picture films) to conduct the business and affairs of his said principal as follows—that is to say:

1. To negotiate and bargain with operators of motion-picture theatres in the territory served by his exchange for the lease of one or more of the motion-picture films distributed as hereinafter described by his said principal;

2. To select the exhibitors from whom to solicit business and from whom to receive applications for contracts for the first and for the subsequent showings of said motion pictures in the cities and towns in said territory;

3. To receive applications for contracts on the standard
22 form of exhibition contract which is described more particularly hereinafter, from said exhibitors so selected as aforesaid and in accordance with the terms negotiated by him with said exhibitors;

4. To transmit said applications to the principal office of his principal for acceptance or rejection, meaning in the case of each exchange manager of a defendant distributor to transmit the same to the said principal office in the city of New York, in the State of New York, of the said defendant distributor for acceptance or rejection by said defendant distributor;

5. To notify said exhibitors of the acceptance or rejection of their said applications for contracts;

6. To determine the date of availability of each said motion picture distributed by his said principal for exhibition by each exhibitor having a right thereto in accordance with all said contracts therefor made by his said principal prior to the hereinafter-described transportation and booking of said picture;

7. To notify each exhibitor having a contract with his said principal for the first-run exhibition of any motion picture distributed by his said principal of the date of availability of said picture for exhibition by said exhibitor;

8. To notify each exhibitor having a contract with his said principal for subsequent-run exhibition of any motion picture distributed by his said principal of the date of availability of said motion
23 picture for exhibition by him in accordance with the provisions of the contracts of said exhibitor and of exhibitors having prior rights thereto;

9. To arrange with all exhibitors having contracts for the exhibition of each said motion picture distributed by his said principal for their respective dates for exhibiting the same in accordance with the terms of their said contracts;

10. To arrange that a suitable print of each said motion picture be available at said exchange for delivery to each said exhibitor in accordance with said arrangements;

11. To determine the manner of delivering said motion-picture films to said exhibitors and the instrumentality of commerce (if any) to be employed in so delivering each said motion-picture film;

12. To deliver said motion-picture films to said exhibitors in accordance with said arrangements and with said determinations;

13. To do all other acts and things necessary to the performance and fulfillment by his said principal of said contracts;

14. To be a member of the film board of trade in the territory served by his said exchange and to participate in all activities of said film board of trade;

15. To act as a member of the credit committee of the film board of trade (which is described more particularly hereinafter) in the territory served by his said exchange;

24 16. To do all acts and things necessary to enforce decisions of said credit committees in accordance with rules and regulations agreed upon by said defendant distributors and by said defendant film boards of trade, which said rules and regulations are described more particualrly hereinafter.

V

INTERSTATE COMMERCE IN MOTION-PICTURE FILMS

1. Location of laboratories

The location of each and every laboratory at which motion-picture films have been produced as aforesaid, and from which motion-picture films have been shipped and transported by said defendant distributors during the year last past to their said exchanges throughout the United States, is as follows, to wit:

a. New York, New York;
b. Long Island City, New York;
c. Brooklyn, New York;
d. Jersey City, New Jersey;
e. Bound Brook, New Jersey;
f. Fort Lee, New Jersey;
g. Wilkes-Barre, Pennsylvania;
h. Los Angeles, California; and
i. Hollywood, California.

All positive prints of each motion picture distributed during said time by each defendant distributor have been produced at one of the aforesaid laboratories. All positive prints of each motion picture distributed by each defendant distributor during said time have been shipped, transported, and supplied in the manner hereinafter described from that one of said laboratories at which the same were produced as aforesaid to each and every exchange in the United States of the defendant distributor which has distributed that motion picture.

2. Distribution of positive prints to exchanges

For many years last past each of said defendant distributors has prepared in advance annually its program for its production of feature pictures and of short subjects, has announced during the spring of each year its said advance program for the distribution period of twelve months starting the following fall and has described each of said motion pictures to be produced by it during said period by giving its title and by naming the featured players therein, the director and the author thereof, and the play or story (if any) from which it was derived, and has produced motion pictures each year substantially in accordance with said program, so arranging the production thereof that said positive motion-picture films have been completed and have been shipped and transported to its said exchanges throughout the United States at approximately regular intervals.

3. Contracts for exhibition of motion pictures

During many years last past, said defendant distributors have distributed their said motion-picture films so produced as aforesaid in accordance with contracts entered into with individuals, copartnerships, and corporations engaged in the business of operating
26 motion-picture theatres throughout the United States, said persons, copartnerships, and corporations generally being referred to and being referred to hereinafter as exhibitors, and all said contracts have contained all the terms and provisions of a standard exhibition contract agreed upon by said defendant distributors, and each has been identical with all others entered into at approximately the same time by said defendant distributors except as to:

a. Their dates;

b. The names of the contracting parties;

c. The names and addresses of the theatres;

d. The designations of the motion pictures leased;

e. The durations of the runs licensed, meaning thereby the number of successive days for which each contract licenses the party of the second part, the exhibitor, to exhibit each motion picture designated and described therein in the theatre specified therein;

f. The license fees; and

g. The protection, meaning thereby any provision of any of said contracts which restricts for the period of time agreed upon by said parties, the right of the party of the first part, the distributor, to license the exhibition at any other theatre or theatres competing with the specified theatre of the party of the second part, the exhibitor, of any picture or pictures thereby licensed for exhibition.

27 4. Contracts for groups of motion pictures

During the period of time hereinafter mentioned each operator of a motion-picture theatre in the United States has entered into contracts with said defendant distributors or some of them for the lease of approximately the number of feature pictures and of short subjects required to operate his motion-picture theatre for an extended future period, generally for a period of one year. Substantially all of said motion pictures required by each said operator of a motion-picture theatre so to operate his said theatre have been leased by contracts licensing the exhibition of a group of such motion pictures.

5. Future deliveries under group contracts

The number of motion pictures constituting the aforesaid groups has varied in accordance with the aforesaid production programs of said defendant distributors, but said groups usually have comprised from twenty to sixty motion pictures. Each said motion picture included in one of said groups and so licensed as aforesaid for exhibi-

tion has been described in a schedule in each contract therefor by its title and by the names of the principal actors therein and of its director and author. Said defendant distributors have entered into most of said contracts to lease said groups of motion pictures prior to the manufacture at said laboratories hereinbefore enumerated of the positive prints of any or of most of said motion pictures thereafter to be supplied to said exhibitors in performance of said contracts.

28 6. News reels

All contracts entered into as aforesaid by said defendant distributors with reference to news reels have licensed the exhibition of the same and have stipulated that they be delivered regularly, weekly or semiweekly, throughout an extended future period, generally a period of one year. Said motion pictures on said news reels have been photographed, and said positive prints thereof have been produced, shipped, and delivered to exhibitors, so as to permit their exhibition as promptly as possible after the occurrence of the events portrayed thereby. All contracts to lease sand news reels have been entered into prior to the manufacture at said laboratories of the positive prints of substantially all of said news reels thereafter to be supplied to said exhibitors in performance of said contracts.

7. Spot booking contracts

Each said operator of a motion-picture theatre who has required individual motion pictures to fill in play dates not taken by motion pictures included in said groups, or to complete his programs of motion pictures, has secured the same by entering into "spot booking" contracts therefor, meaning thereby contracts between an exhibitor and a distributor for the exhibition in the immediate future of a motion picture or of motion pictures, positive prints of which are in the exchange of the distributor and available for such exhibition at the time such contracts are made.

29 8. Shipments from laboratories to exchanges

During the period of time herein mentioned each positive print of each motion picture produced as aforesaid at each laboratory hereinbefore listed has been packed in a tin box which has been enclosed in a wooden case; all said motion-picture films so produced at said laboratories when so packed have been shipped and transported from said laboratories to said exchanges of said defendant distributors throughout the United States over common-carrier routes. The number of said prints of each said motion picture so shipped and transported by each said defendant distributor to each of its said exchanges in the usual course of business has conformed to a mini-

mum quota for each said exchange determined and established by each said defendant distributor as the number of said prints ordinarily required to fulfill contracts for average motion pictures in the territory served by said exchange. The number of said motion-picture films so shipped and transported to each said exchange as aforesaid has been determined in the case of exceptional motion pictures and in the case of news reels largely by the number of contracts theretofore obtained from motion-picture exhibitors in the territory served by each said exchange for the exhibition of each said motion picture and for the furnishing of said news-reel service.

9. Replacement shipments

Motion-picture films frequently have been shipped and transported by said defendant distributors from said laboratories to said
30 exchanges throughout the United States subsequent to the shipment and transportation of the prints comprising said fixed quotas for said exchanges or of the number of prints otherwise determined for such first shipments as aforesaid for the purpose of supplementing said first shipments or of replacing worn-out prints and thereby of enabling the performance of contracts theretofore obtained from motion-picture exhibitors for the performance of said motion pictures.

10. Release and fixing of play dates.

Prior to the shipment and transportation of the positive prints of each motion picture distributed by each defendant distributor from the laboratory where the same were produced as aforesaid to said exchanges so maintained as aforesaid throughout the United States, each said defendant distributor has notified the manager of each of its said exchanges of the date, generally called the release date and so designated herein, when each said motion picture would be available for exhibition in motion-picture theatres in the territory served by each said exchange. Each said exchange manager thereupon has notified the exhibitors in the aforesaid territory served by his said exchange of the date of availability of each motion picture distributed through his said exchange, and has determined and arranged dates for the exhibition thereof by exhibitors having contractual rights therefor. The arranging of a definite date for the
31 exhibition of a motion picture generally has been and now is referred to, and it is referred to hereinafter as booking said picture, and the procedure for so doing during all the time herein mentioned has been prescribed by the aforesaid agreements between said defendant distributors.

11. Distribution from exchanges to theatres

Each said contract licensing the exhibition of a motion picture or of motion pictures has provided that delivery of said positive print

or prints by the distributor to the exhibitor at the distributor's said exchange in the territory in which said exhibitor's theatre is located, or to a common carrier, or to the United States postal authorities for mailing, or to any agent of the exhibitor, should be deemed delivery by the distributor to the exhibitor thereunder. In accordance with said contracts entered into as aforesaid before said prints were produced at said laboratories and were transported therefrom to said exchanges in the cities and States aforesaid:

a. Said positive prints of said motion pictures have been so delivered and have been transported and supplied from the shipping rooms of said exchanges to the theatres of said exhibitors having the first rights to the exhibition of the same by said exhibitors and their agents, and by common carriers and the United States postal authorities and other instrumentalities of commerce in accordance with designations by said distributors but at the expense of said exhibitors;

32 b. Said motion pictures have been exhibited by said exhibitors in their motion-picture theatres for the periods of time provided in their said contracts;

c. Said positive prints then have been transported and returned to said exchanges by said exhibitors and their agents, and by instrumentalities of commerce and common carriers and the United States postal authorities, in accordance with designations by said distributors but at the expense of said exhibitors;

d. Said positive prints of said motion pictures then have been transported and supplied in the manner aforesaid from said exchanges to exhibitors having the next right to exhibit the same in accordance with their said contracts, and

e. Said course of business of said films being shipped and transported from said exchanges to the theatres of exhibitors and back to said exchanges has been continued until such time as said prints have become unfit for projection through motion-picture machines, whereupon said prints have been shipped and transported by said defendant distributors from said exchanges throughout the United States to points within the State of New York where said films have been scrapped.

12. Interstate circulation of prints

During the period of time herein mentioned no designation of a specific print of any motion picture to be supplied to an exhibitor having a contract therefor has been made prior to the de-

33 livery thereof to said exhibitor in the manner aforesaid, and each such deliveries of a motion-picture film has been made by taking any suitable print of said motion picture available in the office of the exchange when said delivery became due.

Motion-picture films frequently have been booked and selected for delivery by each said exchange in the United States of each said defendant distributor, so that they have been shipped and trans-

ported from each said exchange to motion-picture theatres in a State other than that in which said exchange is located, from said theatres in said State other than that in which said exchange is located back to said exchange, from said exchange to motion-picture theatres in said State in which said exchange is located, and from said theatres back to said exchange. Similarly, said motion-picture films frequently have been shipped and transported between each said exchange in the United States of each said defendant distributor and motion-picture theatres in each and every State or portion of a State included in the territory in which each defendant film board of trade operates as aforesaid, preceding or subsequent to exhibitions thereof in motion-picture theatres in said State wherein said exchange is located, and preceding or subsequent to exhibitions thereof in motion-picture theatres in a State other than that in which they were previously or subsequently exhibited.

34 13. Interchange of prints between exchanges

The said defendant distributors during the period of time herein mentioned have maintained exchanges in the aforesaid distribution centers throughout the United States, and motion-picture films shipped and transported from the laboratory at which the same were produced to one of said exchanges frequently have been shipped and transported from said exchange to another of said exchanges of the same defendant distributor so located as aforesaid in another State than the State in which said first-mentioned exchange has been located for the temporary purpose of being supplied to exhibitors within the territory served by said second exchange in accordance with contracts therefor. After having fulfilled said temporary purpose at said second exchange, said films have been shipped and transported from said second exchange in said State other than that in which said first exchange has been located back to said first exchange in another State, where they again have been distributed to exhibitors in the aforesaid territory served in the manner aforesaid by said exchange.

VI

CONTINUITY OF INTERSTATE COMMERCE

During all the time herein mentioned there has been a continuous flow and course of interstate trade and commerce in motion-picture films between the several States of the United States, par-
35 ticularly between the said city of New York, in said State of New York, and in this division and district and other States of the United States, consisting, as aforesaid, of:

1. The soliciting and making of contracts for the future delivery over an extended period of time of motion-picture films to be produced and delivered as aforesaid during said future period;

2. The transportation of said films from said laboratories to said exchanges throughout the United States for the purpose of performing said contracts for the future delivery of said films;

3. The continuing distribution of said films from said exchanges to motion-picture theatres in the aforesaid territory served by each said exchange;

4. The interchange of said films between each said exchange and other exchanges of the same defendant distributor in other States of the United States, and

5. The final shipment of said films from said exchanges throughout the United States to points within the State of New York.

VII

DISTRIBUTORS AND EXCHANGE MANAGERS ENGAGED IN INTERSTATE COMMERCE

All said flow and course of interstate trade and commerce which has consisted of the distribution of said motion-picture films from said exchanges throughout the United States to said motion-picture theatres in said territory served by each said exchange, and of
36 the temporary interchange of said motion-picture films by each said exchange with said other exchanges in States other than the State in which is located the exchange to which said films first had been transported and supplied, as aforesaid, has been during all the time herein mentioned under the direction and control of said exchange managers who have been members of the defendant film boards of trade, and said defendant distributors and said exchange managers during the period of time herein mentioned have carried on trade and commerce among the several States of the United States within the meaning of the act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

VIII

THE CONSPIRACY

The defendants, each well knowing all the matters and things hereinbefore alleged, unlawfully have engaged in a conspiracy in restraint of said interstate trade and commerce in motion-picture films so carried on as aforesaid by said defendant distributors, by said members of said defendant film boards of trade, and by all said exhibitors of motion pictures in the United States—that is to say, in a conspiracy now here described in restraint of and which throughout the period of time herein mentioned in fact unlawfully
37 has restrained and which now is restraining said interstate trade and commerce, to wit:

Since in or about January, 1926, said defendant distributors and said members of said defendant film boards of trade have carried on their said interstate trade and commerce in motion-picture films in accordance with and pursuant to an understanding and agreement:

a. To coerce and to require every exhibitor of motion pictures in the United States, acquiring a motion-picture theatre by purchase or transfer, to assume and to perform every uncompleted contract for the exhibition of motion pictures in such theatre existing at the time of such purchase or transfer between the former owner or operator of said theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade;

b. To deprive every exhibitor of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer of the right to have any court having jurisdiction of the question settle and determine whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractural obligations.

Since in or about January, 1926, said defendant distributors and said members of said defendant film boards of trade have carried on their interstate trade and commerce in motion-picture films in accordance with and pursuant to an understanding and agreement
38 between said defendants to carry out and to accomplish the aforesaid purposes and objects:

a. By requiring every exhibitor of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer, hereinafter referred to as a new owner of a theatre, to furnish detailed information regarding such purchase or transfer and regarding the details of his past and present businesses;

b. By refusing to enter into any contract with any such new owner of a motion-picture theatre in the United States to license the exhibition of any motion picture and to transport, supply, and deliver any motion-picture film in the course of the aforesaid interstate trade and commerce except on the terms and under the conditions (hereinafter specified) agreed upon by said defendants.

All in the manner and by the means more particularly set forth hereinafter.

IX

THE MEANS

1. Adoption of credit committee rules

Since said January, 1926, the defendant distributors and the members of the defendant film boards of trade have carried on their said interstate trade and commerce in motion-picture films pursuant to the aforesaid understanding and agreement and in accordance therewith:

a. In or about January, 1926. said defendant distributors prepared and caused each defendant film board of trade to
39 adopt rules and regulations for the establishment and operations of a credit committee, a copy of which is attached hereto and marked "Exhibit A" and made a part hereof;

b. From January, 1926, until the date of the filing of this petition each defendant film board of trade has operated under and in accordance with the aforesaid rules and regulations for the establishment and operations of a credit committee, and each member of each defendant film board of trade has conducted the aforesaid interstate trade and commerce in motion-picture films of his principal in accordance with the aforesaid understanding and agreement between said defendants and in conformity with the provisions of said rules and regulations for the establishment and operations of a credit committee.

Your petitioner alleges on information and belief that each defendant film board of trade will continue to operate under and in accordance with the said rules and regulations for the establishment and operations of a credit committee, and that each member of each defendant film board of trade will continue to conduct the aforesaid interstate trade and commerce in motion-picture films of his principal in accordance with the aforesaid understanding and agreement between said defendants and in conformity with the provisions of said rules and regulations for the establishment and operations of a credit committee.

40 2. Provisions of credit committee rules

The aforesaid rules and regulations for the establishment and operations of a credit committee during the period of time herein mentioned have provided and they now provide:

a. That each defendant film board of trade appoint a credit committee of three members to investigate and report to the members the names of all persons acquiring by purchase or transfer motion-picture theatres located in the territory within which such film board of trade operates;

b. That all sales or transfers of theatres of which members of the film board of trade receive knowledge be reported promptly to the secretary of the credit committee;

c. That each such reported sale or transfer and such sales or transfers as come to the knowledge of the secretary be listed by the secretary; that at such intervals as the credit committee determine a copy thereof be furnished to the members of the film board of trade for their confidential information; and that such list be designated as a "credit information list";

d. That forthwith upon the receipt of each credit information list each member of the film board of trade deliver to the secretary a statement of each existing contract with such member for the

exhibition of motion pictures at each theatre listed, such statement to contain—

(a) The name of the exhibitor with whom each such contract was made and, if known, the name of the new owner;

41 (b) (1) The number of pictures and (2) the number of playing days contracted for, and

(c) Information whether or not the exhibitor provided as a condition of the sale or transfer of his theatre for the assumption and complete performance by the new owner of all contracts so listed and if the new owner agreed to such condition;

e. That the secretary of the credit committee immediately upon the receipt of a report or upon learning of the sale or transfer of a motion-picture theatre, request the new owner of such theatre to submit within five days from the date of such request information, data, and references for the consideration of the credit committee;

f. That upon the refusal or failure of any new owner of a theatre to furnish within the time above provided the information and references requested of such new owner the credit committee indicate such fact upon the credit information list opposite the name of such theatre by the words "Credit information refused" or by the symbols "C. I. R.";

g. That the credit committee also indicate on the credit information list every sale or transfer of a theatre which upon investigation the credit committee concludes upon information received and considered was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of motion pictures at such theatre, such conclusion

42 to be indicated opposite the name of the theatre by the words, "Transferred or sold to avoid existing contracts," or by the symbols "F. T.";

h. That the credit committee also indicate on the credit information list in a column headed "Cash security" opposite the name of each theatre listed (excepting, however, such theatres the new owners of which should agree to assume and complete all existing contracts entered into by the prior owners and of which agreement notice be given to or received by the credit committee) the amount of cash security not to exceed the sum of one thousand dollars ($1,000), which in the judgment of the credit committee would be a reasonable sum which members of the film board of trade should require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre;

i. That no member of the film board of trade enter into any contract or contracts for the exhibition of motion pictures at any theatre listed on the credit information list for a period of ten days from the date of the first appearance of such theatre on such list, nor after such period of ten days unless the new owner or lessee of such theatre deposit as security for each contract the amount specified

on the credit information list, but that the members of the film board of trade might "spot book" pictures for exhibition at any such theatre during the said ten-day period.

43 3. Credit committee questionnaire

In accordance with the aforesaid understanding and agreement and to carry out said provisions of said rules and regulations for the establishment and operations of a credit committee:

a. In or about January, 1926, the defendant distributors prepared and caused each defendant film board of trade to adopt a credit committee questionnaire, a copy of which is attached hereto and marked "Exhibit B" and made a part hereof;

b. From January, 1926, until the date of the filing of this petition the credit committee of each defendant film board of trade has used said credit committee questionnaire and has placed the words "Credit information refused" or the symbols "C. I. R." opposite the name of each motion-picture theatre the new owner of which has refused or has failed to answer fully each and every question contained in said questionnaire and/or to give each and every item of information called for by said questionnaire.

Your petitioner alleges on information and belief that the credit committee of each defendant film board of trade will continue to use said credit committee questionnaire and will continue to place the words "Credit information refused" or the symbols "C. I. R." opposite the name of each motion-picture theatre the new owner of which refuses or fails to answer fully each and every question
44 contained in said questionnaire and/or to give each and every item of information called for by said questionnaire.

4. Supplemental agreements

Since in or about January, 1926, said exchange managers who have constituted the membership of a substantial proportion of said defendant film boards of trade have carried on the aforesaid interstate trade and commerce in motion-picture films of their said principals and the businesses and affairs of said defendant film boards of trade in accordance with and pursuant to understandings and agreements between said members of said film boards of trade which have supplemented and exceeded the provisions of said rules and regulations for the establishment and operations of a credit committee. The members of said defendant film boards of trade have entered into said supplemental understandings and agreements and have carried on the said interstate trade and commerce of their principals in accordance with and pursuant to said supplemental understandings and agreements without the knowledge and against the general instructions of the defendant distributors and of the defendant association.

Said understandings and agreements are as follows, to wit:

a. To refuse to enter into any contract with any new owner of a motion-picture theatre to license the exhibition of any motion picture or motion pictures and to transport, supply, furnish,
45 and/or deliver any motion-picture film or films to any such new owner unless or until said new owner has assumed and has agreed to perform each and every uncompleted contract for the exhibition of motion pictures in the motion-picture theatre acquired by him by purchase or transfer existing at the time of such purchase or transfer between the former owner or operator of such theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade;

b. To retain on the credit information list the name of each and every motion-picture theatre acquired by a new owner by purchase or transfer unless or until said new owner has assumed and has agreed to perform each and every uncompleted contract for the exhibition of motion pictures in said theatre existing at the time of such purchase or transfer between the former owner or operator of such theater and any defendant distributor and/or any other principal of any member of any defendant film board of trade;

c. To refuse to "spot book" any motion-picture film or motion-picture films with any new owner of a motion-picture theatre prior to the report of the credit committee upon the credit standing of such new owner unless such new owner deposit security for the performance of each such spot-booking contract;

d. To require each new owner of a motion-picture theatre to
46 deposit security for the performance of each and every new contract for the exhibition of any motion picture or motion pictures at the theater acquired by him by purchase or transfer entered into by such new owner with any defendant distributor and/or any other principal of any member of such defendant film board of trade.

Said supplemental understandings and agreements have been entered into by said members of said defendant film boards of trade to accomplish and to carry out the purposes and objects of the aforesaid conspiracy to which all the defendants herein have been and are parties as aforesaid.

The formation of said supplemental understandings and agreements and the conduct of the interstate trade and commerce in motion-picture films pursuant to and in accordance with said supplemental understandings and agreements have been accomplished through the instrumentality of the defendant film boards or trade and of the procedure for the operation of credit committees established and maintained as aforesaid by the defendant distributors and by the defendant film boards of trade.

Your petitioner alleges on information and belief that unless all members of all film boards of trade are enjoined from continuing in effect said supplemental understandings and agreements or any of

them and from entering into hereafter agreements and understandings similar to said supplemental understandings and agree-
47 ments or any of them the members of many defendant film boards of trade will continue to carry on the interstate trade and commerce in motion-picture films of their principals in accordance with and pursuant to such understandings and agreements.

X

PRAYER

Wherefore, plaintiff prays:

First. That writs of subpœna issue directed to each and every of the defendants commanding them to appear and answer, but not under oath (answer under oath being hereby expressly waived), the allegations contained in this complaint, and to abide by and perform such orders and decrees as the court may make in the premises.

Second. That the court, upon the final hearing of this cause, adjudge and decree that the defendants have engaged in a conspiracy in restraint of interstate trade and commerce in motion-picture films in the manner and by the means hereinbefore described, in violation of the act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants and their officers, agents, and employees be perpetually enjoined, individually and collectively, from further engaging in, carrying out, or maintaining the said conspiracy, or any other of like character or effect, and particularly from
48 further employing any or all of the above-described means of carrying out said conspiracy.

Third. That plaintiff have such other further and general relief as the nature of the case may require and the court may deem proper.

UNITED STATES OF AMERICA,
By CHARLES H. TUTTLE,
United States Attorney for the Southern District of New York.

JOHN G. SARGENT,
The Attorney General.
WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
C. STANLEY THOMPSON,
WILLIAM R. BENHAM,
RALSTONE R. IRVINE,
HAROLD JONES,
Special Assistants to the Attorney General.

49 *Exhibit A to petition*

RULES AND REGULATIONS FOR THE ESTABLISHMENT AND OPERATIONS OF A CREDIT COMMITTEE

Rule I

To correct abuses and unfair practices which now prevail in the motion-picture industry arising out of changes of ownership of theatres for the purpose of avoiding uncompleted contracts, the president, with the advice and consent of the members, shall appoint a credit committee of three members to serve for a period of three months and thereafter until their successors are appointed to investigate and report to the members the names of all persons who have acquired by purchase or transfer theatres located in the territory within which this film board of trade operates.

Rule II

The secretary of this film board of trade shall be the secretary of the credit committee and shall perform the duties hereinafter specified and as the credit committee shall from time to time direct.

Rule III

All scales or transfers of theatres of which members receive knowledge shall be promptly reported to the secretary of the credit committee. Each such reported sale or transfer and such sales or transfers as shall come to the knowledge of the secretary shall be listed by the secretary and at such intervals as the credit committee shall determine a copy thereof shall be furnished to the members of this film board of trade for their confidential information. Such
50 list shall be designated as a "Credit information list." Forthwith upon the receipt of each credit information list each member shall deliver to the secretary a statement of each existing contract with such member for the exibition of pictures at each theatre listed. Such statement shall contain (a) the name of the exhibitor with whom each such contract was made and if known the name of the new owner, (b) (1) the number of pictures and (2) the number of playing days contracted for, and (c) if known whether or not the exhibitor provided as a condition of the sale or transfer of his theatre for the assumption and complete performance by the new owner of all contracts so listed and if the new owner has agreed to such condition.

Rule IV

The secretary of the credit committee immediately upon the receipt of a report or learning of the sale or transfer of a theatre shall by letter request the new owner of such theatre to furnish to the credit

committee within five days from the date of such request information and references to enable the credit committee to intelligently report to the members the credit standing of such new owner. For the purpose of securing such information the credit committee shall adopt a form of questionnaire.

Rule V

The credit committee shall meet at least once in each week to examine and report upon the credit standing of new owners of theaters and shall furnish to the members for their confidential information a copy of such report.

Rule VI

Upon the refusal or failure of the new owner of a theatre to furnish within the time above provided the information and
51 references requested of such new owner the credit committee shall indicate such a fact upon the credit information list opposite the name of such theatre by the words "Credit information refused" (for which words for brevity the following letters may be used: "C. I. R.").

The credit committee also shall indicate on the credit information list every sale or transfer of a theatre which upon investigation the credit committee concludes upon information received and considered was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of pictures at such theatre. Such conclusion shall be indicated opposite the name of the theatre by the words "Transferred or sold to avoid existing contracts" (for which words for brevity the following letters many be used: "F. T.").

The credit committee shall also indicate on the credit information list in a column headed "Cash security" opposite the name of each theatre listed (excepting, however, such theatres the new owners of which have agreed to assume and complete all existing contracts entered into by the prior owners, and of which agreement notice has been given to or received by the credit committee) the amount of cash security, not to exceed the sum of one thousand dollars ($1,000), which in the judgment of the credit committee is a reasonable sum, which members shall require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre. The credit committee in determining the amount of such security shall consider the total of the rental of pictures likely to be contracted for and the frequency of the possession by the exhibitor of prints of such pictures.

Rule VII (Amended)

No member of this film board of trade shall enter into a contract or contracts for the exhibition of pictures at any theatre
52 listed on the credit information list for a period of ten (10) days from the date of the first appearance of such theatre upon such list nor after such period of ten (10) days unless the new owner or lessee of such theatre shall have paid in cash to such member with whom such owner or lessee desires to contract for pictures the amount of security specified on the credit information list opposite the name of such theatre.

This rule shall not be deemed to prohibit members from "spot booking" pictures for exhibition at any such theatre during the said ten day period or if the credit committee shall not have then reported upon the credit standing of the new owner or lessee of any such theatre to "spot book" pictures for exhibition until the credit committee shall have so reported.

Rule VIII

The credit committee may from time to time upon satisfactory evidence of the credit standing of any new owner of a theatre sold or transferred remove from the credit information list the name of the theatre owned or operated by such new owner, and in such case the members of this film board of trade shall be free to contract with such new owner for the exhibition of pictures at such theatre without requiring such new owner to deposit any cash security as a condition for the making of such contract.

Rule IX

Members shall upon demand of the credit committee furnish any information the credit committee may require to carry out its objects, which shall include the right of the credit committee to examine the books and records of members, but only with respect to any exhibitor who has sold or transferred his theatre and has failed to provide for the assumption by the new owner of existing uncompleted contracts.

53

Rule X

Any member of the film board of trade who shall violate any of these rules or regulations with respect to the establishment and operations of a credit committee or who shall wilfully fail to report to the secretary of the credit committee the sale or transfer of any theatre of which such member has received knowledge shall be subject to suspension for a definite period or expulsion from membership. Any such member shall be entitled prior to being suspended or expelled to receive notice in writing of the violation complained of and such notice shall specify the time and place for a hearing thereon. After such hearing the members of this film board of

trade by majority vote shall determine whether or not the charge against such member has been sustained and if sustained whether such member shall be suspended for a definite period (and if so fix the period) or expelled.

54 *Exhibit B to petition*

Please answer each question, sign and return to—

CREDIT COMMITTEE

---------- FILM BOARD OF TRADE

Address ----------

1. Name of theatre----------
2. Street address---------- City and State----------
   Population of city---------- Seating capacity----------
V Policy: Pictures ( ) Vaudeville ( ) Road shows ( )
   Number of days open each week---------- Time of first performance---------- a. m.----------p. m.
   What days do you have matinees---------- Time of first performance----------
   Telephone No. of office----------; of residence----------
   Name of person, firm, or corporation, operating theatre----------
   ----
   If a corporation give corporate name----------
   Name of president----------
   Name of treasurer----------
   Name of secretary----------
   Name of general manager----------
   Is stock of corporation or a substantial amount thereof owned or held by another corporation?----------
If so, give name of corporation and names of officers and directors----------
----
If partnership, give names of partners----------

Who is authorized to enter into and sign contracts----------
----
55 3. How will the contracts be signed----------
   4. Is theater owned or leased---------If leased, state expiration date of lease----------
5. Name of lessor----------If owned, state name of owner----------
6. On what date was theater taken over----------
7. Place where and date of recording bill of sale----------
8. Admission prices----------
9. Condition of projection machines----------
10. Have you or your operator inspected them, if not, do you agree to have them inspected within thirty days----------
11. Model of machines----------Year----------
12. Name theaters heretofore conducted, stating location of each----------
    ----
13. If you have never been engaged in the exhibition of pictures, state previous business----------
14. Bank references----------
15. Other references----------
16. Specify contracts for film service made by previous owner:

Name of distributor	Date of contract	No. pictures unplayed

17. Specify contracts you have assumed_____

_____

56 18. If you have not assumed the previous owner's contracts, will you assume them?_____

(If your answer to this question is "yes," fill out and sign the attached agreement of assumption.)

The undersigned represents and warrants that the answers to the foregoing questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at the above-named theater.

Signature_____
Owner Lessee (strike out one).

Dated_____19

57 Assumption of contracts

_____19__

Know all men by these presents, that the undersigned _____ owner lessee of the _____ Theatre, in consideration of one dollar lawful money of the United States in hand paid, the receipt of which is hereby asknowledge, and other valuable considerations, hereby agrees to assume, carry out, and fully perform each of the contracts now existing between _____ and the following distributors:
(Name of previous owner)

_____

_____

_____

_____

_____

for the exhibition of pictures at said theatre from the above date.

Distributors	Date of contract	No. pictures unplayed	Class (features, comedies, news, other shorts)

_____
(New lessee New owner) (Strike out one)
_____ Theatre
Address _____

58 Statement of financial condition

Statement of _____
Individual Corporation Partnership (strike out one)

Operating _____ Theatre

To Credit Committee of the Film Board:

For the purpose of inducing the members of the film board of trade to contract with the undersigned owner (or lessee) for the exhibition of motion pictures at the _____ Theatre, I (or we) warrant and represent that the following is a true and correct statement of my (or our) financial condition on the _____ day of _____ 19__, and agree that in case any change occurs that materially reduces my (or our) ability to pay all claims and demands against me (or us) or materially increases my (or our)

liabilities or decreases my (or our) assets, I (or we) will forthwith notify you in writing to such effect.

ASSETS				LIABILITIES			
Cash on hand, and in bank				Notes payable			
Notes receivable				Money borrowed			
Real estate (how valued)				Accounts payable			
Furniture and fixtures				Mortgages—real estate			
Screen, machines, chairs				Chattel trusts			
All other assets consisting of:				Mortgages on personalty and fixtures			
				All other liabilities consisting of:			
Total				Total			

Net worth as of this date $ ---------.

Exhibitor.

59 In United States District Court

Answer to petition

The joint and several answer of First National Pictures, Inc., Paramount Famous Lasky Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Universal Film Exchanges, Inc., United Artists Corporation, Fox Film Corporation, Pathe Exchange, Inc., F. B. O. Pictures Corporation, Vitagraph, Inc., and Educational Film Exchanges, Inc., (called in the petition and this answer " defendant distributors "), Motion Picture Producers and Distributors of America, Inc., Film Board of Trade of Albany, Atlanta Film Board of Trade, New England Film Board of Trade, Buffalo Film Board of Trade, Montana Film Board of Trade, Charlotte Film Board of Trade, Chicago Film Board of Trade, Cincinnati Film Board of Trade, Cleveland Film Board of Trade, Dallas Film Board of Trade,
60 Denver Film Board of Trade, Des Moines Film Board of Trade, Detroit Film Board of Trade, Inc., Indianapolis Film Board of Trade, Kansas City Film Board of Trade, Los Angeles Film Exchange Board of Trade, Milwaukee Film Board of Trade, Memphis-Little Rock Film Board of Trade, Minneapolis Film Board of Trade, Inc., New Haven Film Board of Trade, New Orleans Film Board of Trade, New York Film Board of Trade, Oklahoma City Film Board of Trade, Omaha Film Board of Trade, Inc., Philadelphia Film Board of Trade, Pittsburgh Film Board of Trade, Portland Film Board of Trade, St. Louis Film Board of Trade, Inter-Mountain Film Board of Trade of Salt Lake City, San Francisco Film Exchange Board of Trade, Northwest Film Board of Trade, Inc., and Washington Film Board of Trade and the officers and members of said defendant film boards of trade, to

the petition filed in the above entitled cause by the United States of America.

Part A—Admissions and denials

These defendants answering so much and such parts of said petition as they are advised it is material and necessary for them to answer, say:

I

They admit the allegations contained in the paragraphs of Part I of the petition, the said paragraphs being entitled, respectively:
Defendant distributors (pet. pp. 1–3);
Defendant association (pet. p. 3);
Defendant film boards of trade (pet. pp. 4–17).

61

II

Referring to Part II of the petition (Pet. p. 17), entitled "Purposes of Petition," defendants deny that they, or any of them, have engaged, or are engaging or will engage, in a conspiracy in restraint of interstate trade and commerce in motion-picture films.

III

They admit the allegations contained in the paragraphs of Part III of the petition entitled "Description of Industry" (Pet. pp. 18–21), the said paragraphs being entitled respectively:
1. Production of Motion Pictures (Pet. p. 18);
2. Exhibition Life of Films;
3. Classification of Motion Pictures;
4. Complete Program Distribution (Pet. p. 19);
5. Channel of Distribution;
6. Motion Picture Theatres;
7. Film Exchanges (Pet. p. 20);
8. Control by Defendants.

IV

The admit the allegations contained in the paragraphs of Part IV of the petition entitled "Scope of Authority of Members of Film Boards" (Pet. pp. 21–24), except that referring to paragraph 14 (Pet. p. 23) defendants aver that the authority of each exchange manager to participate in activities of a film board of trade is
62 limited to such acts as are in accordance with the rules and regulations agreed upon by the defendant distributors and other distributors and entitled "Rules of Arbitration," dated May 1, 1928, a copy of which will be produced at the trial, and except that referring to paragraph 16 defendants aver that the authority of each exchange manager to do acts and things necessary to enforce decisions of the credit committee is limited to such acts and things as are in

accordance with the "Rules and regulations for the establishment and operations of a committee," annexed to the petition as a part thereof marked Exhibits "A" and "B." (Pet. pp. 49–58.)

V

They admit, except as qualified in this Part V of this answer, the allegations contained in the paragraphs of Part V of the petition entitled "Interstate Commerce in Motion Picture Films" (Pet. pp. 24–34), the said paragraphs being entitled, respectively:

1. Location of Laboratories;
2. Distribution of Positive Prints to Exchanges;
3. Contracts for Exhibition of Motion Pictures (Pet. p. 25), except that defendants aver that the allegations contained in this paragraph of the petition apply only to the period following the adoption of the uniform exhibition contract;
4. Contracts for Groups of Motion Pictures (Pet. p. 27);
5. Future Deliveries Under Group Contracts (Pet. p. 27);

63

6. News Reels (Pet. p. 28);
7. Spot Booking Contracts;
8. Shipments from Laboratories to Exchanges (Pet. p. 29);
9. Replacement Shipments (Pet. p. 29);
10. Release and Fixing of Playdates;
11. Distribution from Exchanges to Theatres (Pet. p. 31);
12. Interstate Circulation of Prints (Pet. p. 32);
13. Interchange of Prints between Exchanges (Pet. p. 34).

VI

They admit the allegations contained in Part VI of the petition entitled "Continuity of Interstate Commerce." (Pet. pp. 34–35.)

VII

They admit the allegations contained in Part VII of the petition entitled "Distributors and Exchange Managers Engaged in Interstate Commerce" (Pet. pp. 35–36), except that defendants aver that the flow and course of interstate trade and commerce therein described has been under the direction and control of said exchange managers subject to the instructions received by said exchange managers from their home or principal offices and that the said exchange managers have never had and do not now have authority to direct or control such trade and commerce except in obedience to instructions from their principal offices.

64

VIII

Referring to Part VIII of the petition (Pet. p. 36), defendants deny that they or any of them have engaged or are engaging in

a conspiracy in restraint of interstate trade and commerce in motion-picture films. They deny that defendant distributors and said defendant film boards of trade or any of them have carried on, or are carrying on, their interstate trade and commerce in motion picture films in accordance with and pursuant to an understanding and agreement between them or any of them to coerce and to require every exhibitor of motion pictures, in the United States acquiring a motion-picture theatre by purchase or transfer, to assume and to perform every uncompleted contract for the exhibition of motion pictures in such theatre existing at the time of such purchase or transfer between the former owner or operator of said theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade: or to deprive every exhibitor of motion pictures in the United States, acquiring a motion-picture theatre by purchase or transfer, of the right to have any court having jurisdiction of the question settle and determine whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractual obligations.

They deny that since in or about January, 1926, or since any other time defendant distributors and members of defendant film boards of trade, or any of them, have carried on their interstate trade and commerce in motion-picture films in accordance with and/or pursuant to any understanding, agreement, or conspiracy between defendants or any of them to carry out and to accomplish any unlawful purpose

65 They deny that they or any of them have agreed or conspired to require or have required or are requiring any exhibitor of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer to furnish detailed information regarding such purchase or transfer and regarding the details of his past and present business; they deny that they or any of them have agreed or conspired to refuse or have refused or are refusing to enter into any contract with any such new owner of a motion-picture theatre in the United States to license the exhibition of any motion picture and to transport, supply, and deliver any motion-picture film in the course of interstate trade and commerce, except upon the terms and under the conditions agreed upon by said defendants.

IX

Referring to Part IX of the petition (Pet. pp. 38–47) defendants admit that defendant distributors prepared and caused each defendant film board of trade to adopt rules and regulations for the establishment and operations of a credit committee, a copy of which is annexed to the petition as a part thereof, marked "Exhibit A," but deny that they did so pursuant to any unlawful understanding, agreement, or conspiracy.

Defendants admit that from, on, or about January, 1926, each defendant film board of trade has operated under and in accordance

with such rules and regulations for the establishment and operations of a credit committee and that each member of each defendant film board of trade has conducted the trade and commerce in motion-picture films of his principal in conformity with the provisions of said rules and regulations for the establishment and operations of a credit committee, but they deny that defendant film boards of trade and the members thereof or any of them in so doing were or now acting pursuant to or carrying out any unlawful understanding, agreement, or conspiracy between the defendants or any of them.

66

Defendants aver that the summary of said rules and regulations for the establishment and operations of a credit committee as set forth in the paragraph of the petition entitled "2. Provisions of Credit Committee Rules" (Pet. pp. 40–42) is not a full and complete statement of the provisions of said rules and regulations and respectfully refer the court to a true and correct copy of said rules and regulations which will be produced at the trial.

Referring to the paragraph of the petition entitled "Credit Committee Questionnaire" (Pet. p. 43), defendants admit that defendant distributors prepared and caused each defendant film board of trade to adopt a credit committee questionnaire substantially in the form of the copy which is attached to the petition as a part thereof marked "Exhibit B," and that from January, 1926, until the date of the filing of the petition the credit committee of each defendant film board of trade has used said credit committee questionnaire, or one substantially like it, and has placed the words "Credit information refused" or the symbols "CIR" opposite the name of each motion-picture theatre the new owner of which has refused to furnish the information and references requested of such new owner, but they deny that the credit committee of each defendant film board of trade has placed said words or symbols opposite the name of each motion-picture theatre the new owner of which has failed or refused to answer fully each and every question contained in said questionnaire and/or to give each and every item of information called for by said questionnaire.

67

Defendants admit that the credit committee of each defendant film board of trade will continue to use said credit committee questionnaire and will continue to place the words "Credit information refused" or the symbols "CIR" opposite the name of each motion-picture theatre the new owner (by purchase or transfer) of which refuses or fails to furnish the information and references requested of such new owner, but they deny that the credit committee of each defendant film board of trade will place said words or symbols opposite the name of each motion-picture theatre the new owner (by transfer or purchase) of which refuses or fails to answer fully each and every question contained in said questionnaire and/or to give each and every item of information called for by said questionnaire.

Defendants aver that the rules and regulations do not provide that each new owner shall answer every question on the questionnaire without exception or shall give each and every item of information called for, without exception, or that if any answer is omitted or any item of information not furnished by a new owner such new owner shall be listed as "Credit information refused" or "CIR." Such substantial compliance with the request for information and references as will enable the credit committee to intelligently report to the members of the film board of trade on the credit standing of the new owner is what the rules and regulations call for, and they have been so interpreted and applied by the defendants in the past and defendants will continue to reasonably interpret and apply said rules and regulations.

68 Referring to paragraph 4 (Pet. p. 44), entitled "Supplemental Agreements," defendants deny that since in or about January, 1926, or since any other time said exchange managers or any of them have carried on the interstate trade and commerce in motion-picture films of their principal and the businesses and affairs of the defendant film boards of trade in accordance with and pursuant to understandings and agreements between the members of the film boards of trade which have supplemented and exceeded the provisions of the rules and regulations for the establishment and operations of a credit committee or in accordance with or pursuant to any such understandings and agreements as are described in said paragraph 4. Defendants admit that defendant distributors and the defendant association have instructed the members of the film boards of trade not to enter into or carry out any understanding or agreement with each other which supplemented and exceeded the provisions of the rules and regulations for the establishment and operations of a credit committee.

Defendants deny every allegation contained in the petition not hereinbefore specifically admitted.

Part B—Defense

For a further defense and by way of explanation and justification of the rules and regulations for the establishment and operations of a credit committee annexed to, and the acts of defendants complained of in the petition, defendants set forth in this answer the facts peculiar to the motion-picture industry, the nature and the extent of the credit advanced by distributors to exhibitors in the ordinary

69 course of business, the great number of changes of ownership of theatres occurring each year, the large losses incurred by defendants by reason of such changes of ownership, the absence of credit information and the need therefor, the purpose, nature and effect of the rules and regulations for the establishment and operations of a credit committee, the existence of keen competition in the industry, the intent of defendants and the end sought to be attained by them, and so defendants aver:

X

There are approximately 22,000 motion-picture theatres in the United States scattered all over the country. (Pet. p. 19.) Each year several thousand of these theatres are sold or transferred one or more times by the owners or operators thereof to new owners and operators. In 1927 there were 3,950 changes of ownership and in 1926 there were 3,438. In 1927, 18% of the theatres in the United States were transferred; in some parts of the country the percentage was several times higher than the average just given for the entire United States and in other parts the percentage was lower. A statement showing for each film board of trade the number of theatres located in its territory and the number of transfers therein in 1927 is annexed as a part of this answer, marked "Exhibit 1."

Defendants have a real interest in these changes of ownership and in the parties thereto, an interest in the seller for the reason that in nearly every case there are, at the time of transfer, existing uncompleted contracts between the seller and some or many of the defendants for the exhibition of pictures at the theatre which is sold, and the transfer makes completion of such contracts
70 impossible unless they are assumed by the new owner and an interest in the new owner or operator, as he will soon be doing business with many or all of the defendants and daily handling their fragile, inflammable, and very valuable motion-picture films.

In 1927 the aggregate amount involved in uncompleted contracts of the 3,950 theatres transferred in that year was upwards of $8,081,000, an average of $2,045 per theatre transferred. Purchasers of 1,237 theatres, constituting 31.3% of the entire number of theatres transferred in 1927, refused to assume any part of contracts involving more than $2,370,000. Purchasers of 2,713 theatres assumed a part or all of contracts amounting to $5,710,000. Therefore changes of ownership in theatres in 1927 caused the defendants losses aggregating largely in excess of $2,370,000. Said "Exhibit 1" shows for the territory of each film board of trade, the amount involved in uncompleted contracts which the purchasers in 1927 refused to assume, and the amount involved in uncompleted contracts which purchasers agreed to assume in all or in part.

XI

Business between the distributor and the exhibitor has always been done by means of written contracts. Each distributor announces in the spring of each year its program of pictures for the 12 months' period (termed "season" in the trade), commencing the following fall, the pictures to be released (which in the trade means made available for exhibition) at approximately regular intervals during such period or season. Immediately after the announcement of

its program of pictures, each distributor proceeds to so-
71 licit and conclude as many contracts as possible for the exhibition of such pictures with the thousands of exhibitors who own or operate the 22,000 theatres. A copy of the standard exhibition contract which is in general use in the industry is annexed hereto as a part thereof, marked "Exhibit 2" (infra, p. 89). This form of contract substantially illustrates the manner in which the business has always been carried on.

As a rule each contract is for a group of pictures varying in number from 20 to 60 (Pet. p. 27) to be produced and made available for exhibition at regular intervals over a period of one year. The contract is usually negotiated and concluded prior to the production of the pictures and in any event before they are released, that is, made available for exhibition, except in case of "spot bookings" of single pictures. (Pet. p. 28.) Spot bookings constitute a very small percentage of the business.

An exhibitor uses feature pictures, short subjects, comedies, and news reels. It is and has been the custom for many years to contract separately for each of these classes of pictures.

No distributor in the couse of a year distributes sufficient feature pictures to supply the average exhibitor's program. The average exhibitor uses under 200 feature pictures and 350 short subjects (news reels, comedies, and novelties), while no distributor releases more than 75 feature pictures, and some release only 12 annually. Therefore the average exhibitor contracts in the course of a year with from 5 to 15 distributors who actively compete with each other for the business. While the average exhibitor signs 25 to 50 contracts, many exhibitors sign more than 50 contracts in the course of a year.

72 As nearly all these contracts are concluded in the spring or early summer of each year and cover pictures to be released at regular intervals during the year beginning the following fall, there are comparatively few cases of the transfer of a theatre in which there are not outstanding uncompleted contracts at the time of the change in the ownership of the theatre.

The distributor proceeds to the expense of production, relying on the contracts with exhibitors which he has secured. If an exhibitor refuses to take a picture when it is released and available for exhibition, the distributor usually suffers a large or total loss of rental or earnings from the picture in the neighborhood or territory covered by such exhibitor's theatre. This follows from the custom of theatres to "book" or contract for their picture programs months in advance. Therefore, when an exhibitor refuses to take a picture, after it is released, which he has contracted to take, the distributor is unable to promptly relicense the picture in a theatre competing with the exhibitor's theatre for the reason that the available time of the competing theatre is already contracted for with other pictures. By the time the competing theatre has an open date the picture is

stale and has lost its normal drawing power, so that it commands for rental or license fee only a small fraction of what the rental was when first released and made available for the exhibitor who has refused to exhibit it.

When a distributor signs a contract with an exhibitor for pictures which are to be delivered in the future, the distributor in fact advances a form of credit to the exhibitor, because after the contract is executed the distributor is prevented from contracting with a neighboring or competing theatre for the same run of the same
73 picture. He is precluded by the terms of the contract from doing so. During the life of the contract the distributor agrees to give the exhibitor "protection" for the period specified in the contract against the exhibition of any of the photoplays named in the contract at theatres in the immediate neighborhood or vicinity of exhibitor's theatre. (Exhibit 2, infra, p. 92.) If the exhibitor later repudiates the contract, the distributor will not be able to place the pictures in that vicinity, for the reason that the competing theatres will be completely booked with other pictures. Therefore the total amount of rental involved in the average contract for 20 to 60 pictures, which represents the entire earning power in that particular neighborhood of all the pictures named in the contract, is a form of credit which the distributor has given the exhibitor and the distributor acts in reliance on that credit.

XII

The contract between the distributor and the exhibitor provides that it shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party, provided that if the exhibitor sells or disposes of his interest in the theatre he may assign the contract to the purchaser of such interest without the written consent of the distributor as a condition precedent to the transfer or assignment. Therefore the new owner may obtain the undelivered pictures specified in any of the existing contracts of the former owner by assuming the contract in which the pictures are specified. It is not necessary for the new owner to secure the consent of the distributor. (Exhibit 2, infra, p. 97.)

With the transfer of his theatre the previous owner or oper-
74 ator loses the capacity to complete the performance of his existing uncompleted contracts with distributors, for the reason that each contract calls for exhibition at the theatre which he has transferred, and as he is no longer the operator of that theatre he no longer has the authority to say what pictures shall be exhibited there. The contract does not permit the exhibition to take place at any other theatre than that specified in the contract. To show the pictures at some other theatre of the seller, if the latter owned another theatre, would, moreover, violate the protection given other theatres in other contracts of the distributor for the same pictures and therefore would not be practicable.

In many instances the principal or only asset of the exhibitor is the ownership of the theatre which he has transferred.

Failure of the exhibitor to make a condition precedent to the change of ownership that the new owner, lessor, or operator shall assume his uncompleted contracts results in a total loss on such contracts to the distributors in many cases.

XIII

Every purchaser of a theatre knows full well before he buys a theatre that the seller in all probability has uncompleted contracts with various distributors for the exhibition of pictures at the theatre which he proposes to buy, for the motion-picture business from the beginning has been carried on as it is being carried on to-day; operators of theatres have always contracted for pictures long before the pictures were available for exhibition and on "season" contracts covering a period of 12 months. Every purchaser well knows, before he buys, that his purchase of the theatre will cause the seller to breach every existing uncompleted contract previously entered into by the seller for the exhibition of pictures at the theatre which is to be sold and that every distributor who has such a contract with the seller will suffer loss and damage on account of such breach, unless either the seller makes a settlement with the distributor before the transfer or the purchaser assumes the outstanding uncompleted contracts. A purchaser who takes no thought for the existing uncompleted contracts of the seller of which he has knowledge, and takes title to a theatre in utter disregard of the property rights of the distributors which reside in those contracts, knowingly commits a wrong against every distributor whose contract with the previous owner is breached on account of the transfer.

XIV

In the course of each year there are numerous transfers of theatres made for the purpose of avoiding existing contracts. An improvident or unscrupulous exhibitor finds he has signed contracts for more pictures than he has available play dates in the season within which to show them, or decides that there are other pictures more desirable than those he has contracted for. Instead of negotiating an honest settlement or adjustment of his contracts, he sells or transfers the theatre to a relation or dummy who notifies the distributors that he has acquired the theatre and thereupon solicits new contracts for pictures in total disregard of the existing obligations of the real owner of the theatre.

The frequent changes of ownership bring into the field each year many new and inexperienced persons. Some of these are unsuccessful and sell out again in a few months, with the result that their contracts also go into the discard.

The description stated above in respect to present conditions
76 applied with equal force to conditions in 1926 and 1927 and previous years. Prior to 1926 the annual losses of the defendant distributors on account of uncompleted contracts for exhibition at transferred theatres amounted to several million dollars each year.

XV

Although distributors have an interest in pertinent information about a new owner and in knowing whether there are outstanding uncompleted contracts when a theatre is transferred, prior to 1926 and the adoption by defendant distributors of the rules and regulations for the establishment and operations of a credit committee no such information was available to the distributors. Distributors have never advised each other of the contracts they have secured with exhibitors but have always jealously guarded from each other all information about their contracts. In the event of the sale or transfer of a theatre, which most often occurs in a town many miles distant from one of the 32 principal centers of distribution where the branch offices of the distributors are located, there was at that time no bureau of information or credit bureau or office from which a distributor could obtain information on pertinent matters, such as the number and status of uncompleted contracts, the experience and financial standing of the new operator or owner, which, if any, of the uncompleted contracts he intended to assume, the condition of the projection equipment, seating capacity, policy of the theatre, number of days open each week, admission prices, time of first performance, name of person, firm, or corporation operating such theatre, name of person authorized to sign contracts, whether theatre is owned or leased.

In the latter part of 1925 defendant distributors devised
77 and put into effect early in 1926, through defendant film boards of trade, the rules and regulations for the establishment and operations of a credit committee as a credit plan with the purpose of providing the defendant distributors some measure of protection by mutual cooperation against the losses arising out of transfers of theatres.

The business of a credit committee is to give the members of the film board of trade accurate information in regard to transfers of theatres and in regard to the responsibility of new owners and operators of theatres located in the territory in which the film board of trade operates. The credit information obtained by a credit committee is confidential and is so used and is disclosed only to members of the film board of trade, all of whom have an interests therein.

XVI

A summary of the rules and regulations follows:

The function of the credit committee is to investigate and report to the members the names of all persons who have acquired by purchase or transfer theatres located in the territory within which the film board of trade operates. (Pet. p. 49.)

The president of each film board of trade appoints, with the advice and consent of the members, three members, each of whom is a branch manager of a distributor, to serve on the credit committee for a period of three months.

Members are required to report promptly to the secretary all sales or transfers of theatres of which they receive knowledge. The secretary makes a list called the credit information list, a copy of which is furnished to the members for their confidential information.

Each member forthwith sends the secretary a statement show-
78 ing each existing contract with such member for the exhibition of pictures at each theatre on the secretary's list, giving the name of the exhibitor with whom the contract was made, the name of the new owner if known, and stating whether the contract has been assumed and the total of all of the pictures contracted for and then unplayed. (Pet. p. 49.)

As soon as the secretary of the credit committee learns of the sale or transfer of a theatre he requests by letter the new owner to furnish the credit committee within 5 days information and references to enable the committee to intelligently report to the members the credit standing of the new owner. The secretary sends the new owner a questionnaire to be filled out. A copy is annexed to the petition as Exhibit B. (Pet. pp. 54–56.)

The credit committee meets at least once a week to examine and report upon the credit standing of new owners of theatres. It furnishes to the members a copy of its report for their confidential information.

If the new owner of a theatre refuses or fails to furnish the information requested, the credit committee indicates such fact upon the credit information list opposite the name of such theatre by the words "Credit information refused" or by the initials "CIR."

The credit committee also indicates on the credit information list every sale or transfer of a theatre which upon investigation the credit committee concludes upon information received and considered was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of pictures at such theatre. This conclusion is indicated opposite the name of the theatre by the words "Transferred or sold to avoid existing contracts" or by the initials "FT" (Pet. p. 51.)

79 On the credit information list, opposite the name of each theatre which has been listed as "CIR" or "FT" (with one exception noted in the next paragraph), there is also indicated, in a column headed "Cash security," the amount of cash security, not to

exceed the sum of $1,000, which in the judgment of the credit committee is a reasonable sum which the members shall require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre. In determining the amount of such security the credit committee is required by the rules to consider and does consider the total amount of the rental of pictures likely to be contracted for and the frequency of the possession by the exhibitor of prints of such pictures. (Pet. p. 51.)

If a new owner has not furnished the information requested but has agreed to assume and complete all existing contracts entered into by the previous owner, of which agreement the credit committee has received notice, the credit committee does not indicate on the list opposite the name of such theatre any amount of cash security. The name of the theatre then goes off the list.

After the name of a theatre has appeared on the credit information list as having been transferred each member is obligated under the credit committee rules for a period of ten days from the date of the first appearance of the name of such theatre on such list from entering into any contract for the exhibition of pictures at such theatre, except that contracts known as "spot-booking" contracts for pictures for exhibition at such theatre may be made during the ten-day period.

After the expiration of the ten-day period, if the credit committee has reported either that credit information has been refused or that the theatre was sold or transferred to avoid existing contracts, each member is obligated to refrain from entering into any contract for the exhibition of pictures at such theatre, unless the new owner or lessee has paid to such member with whom the new owner or lessee desires to contract for pictures the amount of cash security specified on the credit information list opposite the name of such theatre which has been reported "CIR" or "FT." No security is specified if the new owner has assumed existing contracts of the previous owner.

80

As stated above, during the 10-day period members may "spot book" pictures for exhibition at the listed theatre, and if the credit committee has not reported upon the credit standing of the new owner or lessee of the listed theatre within the 10-day period they may "spot book" pictures after the 10-day period until the credit committee has made its report.

Therefor during the period of investigation a new owner may obtain pictures by "spot booking" without putting up any cash security. He can also obtain pictures without depositing security under such of the existing uncompleted contracts of the previous owner as he may be willing to assume or an assignment of which he has accepted.

The requirement that cash security be deposited applies only to (1) cases in which credit information has been refused by new owners who have not assumed the contracts of the previous owner and in such cases only after the credit committee so reports, and (2) cases in

which the credit committee has reached the conclusion after investigation and consideration of information received that the transfer was made by the previous owner for the purpose of avoiding uncompleted contracts.

81 XVII

In 1927, 31 credit committees considered 3,950 cases and gave 3,166 favorable credit ratings and 722 unfavorable credit ratings. There were 510 cases in which credit information was refused, and 212 cases which the credit committees reported as "fraudulent transfer" to avoid existing uncompleted contracts. The fraudulent transfers amounted to about 5.4% of the 3,950 cases considered by the credit committees.

There were 1,237 cases in which the purchasers refused to assume existing contracts and 2,425 cases in which purchasers assumed all or part of existing contracts.

The reports of the credit committees are prepared with the greatest care, so that they will be fair and accurate and they are shown only to the members of the film board of trade, all of whom have an interest therein.

Defendant distributors at all times have been and are ready to complete existing uncompleted contracts entered into with the previous owner of a theatre and to deliver pictures under such contracts to the new owner or operator without demanding of the latter that he deposit security under such contracts or any of them.

The rule requiring the defendant distributors to demand security of a new owner or operator of a theatre who has been listed as "CIR" or "FT" has always been and is now being observed by defendants reasonably and fairly and without occasioning hardship to
82 anyone and for the purpose of securing the defendants, by mutual cooperation, in part against large financial losses through dealings with financially or morally irresponsible exhibitors.

Even with the protection of the rules and regulations very large losses are still incurred by the defendant distributors, as has been stated above, on their contracts with owners and operators of theatres which are subsequently transferred.

The rules complained of in the petition do not go beyond the reasonable requirement to correct the abuses which have crept into the motion-picture business. The provisions are made for protection against only such new owners as (1) have refused to furnish information legitimately requested as a basis for determining credit after failing to assume the contracts of the previous owner and as to these the provisions apply only after the time the credit committee has made its report, and (2) have acquired a theatre for the purpose of enabling the real owner to avoid or become relieved of uncompleted contracts for the exhibition of pictures at such theatre.

In determining the amount of security to be demanded the credit committee considers in each case such facts as are pertinent and helpful in reaching a fair and reasonable conclusion, such as the total of

the rentals and the number of pictures which the exhibitor is likely to contract for.

In every case the purchaser of a theatre may obtain pictures under existing uncompleted contracts of the previous owner without putting up any cash security.

No exhibitor, except one looking for an unfair or dishonest advantage, or with a bad financial condition or a fraudulent transfer to conceal, has cause to object to the rules and regulations hereinabove described.

83 The number of theatres in the United States is constantly increasing and is considerably larger to-day than it was in January, 1926, when the rules complained of in the petition were put into effect.

The rules benefit all honest exhibitors because of the economic saving and because they help to prevent unfair practices on the part of dishonest exhibitors, which give the latter an unfair advantage when practiced over honest exhibitors.

XVIII

At all the times mentioned in the petition there has been, and there is to-day, keen competition throughout the United States in the distribution of motion pictures by the defendant distributors and by other distributors engaged in the motion-picture business. At all such times the defendant distributors have been, and they are to-day, competing actively with each other and with all other distributors in the distribution of their pictures throughout the United States.

Each defendant distributor maintains branch offices called exchanges in the principal centers of distribution in the United States for the purpose of facilitating the distribution of its pictures to exhibitors. (Pet. p. 20.) Except as stated in the petition, each defendant distributor maintains such a branch office in each of the 32 cities named in the petition and in each of such cities other distributors, known as "regional" distributors, maintain offices for the same purpose; the large majority of such other distributors and the places where they maintain offices are stated in the petition (pp. 14–17), which names a total of 77 such regional distributors and specifies the film boards of trade of which each is a member.

84 The States and parts of States in which each branch office operates, that is, the States and parts of States in which the branch managers of such branch offices solicit the exhibition business of the theatres located therein and distribute the pictures of their several companies, are also stated in the petition. These approximately coincide with the territory in which the film board of trade located in the same city operates. In each of such States and parts of States all of the distributors distributing pictures therein, including the 10 defendant distributors, the 77 regional distributors named in the petition, and other distributors not named, are actively competing with each other in the distribution and for the exhibition of

their pictures, and they have been actively competing with each other at all the times mentioned in the petition.

Immediately after the announcement of its program of pictures in the spring or early summer of each year, each distributor proceeds to solicit and conclude as many contracts as possible for the exhibition of such pictures with the thousands of exhibitors who own or operate the 22,000 theatres in the United States. Each contract is a matter of negotiation and bargaining between the distributor and the exhibitor. The great majority in number of the contracts of each distributor are solicited by the branch managers or by their salesmen, but the acceptance of each applicatioin for a contract is subject to the approval of the home or principal office of each distributor.

There is today and there has been for some years an overproduction of pictures, that is, more pictures have been produced than could be readily contracted for. The average theatre in the United
85 States exhibits under 200 features during the course of a year or season, whereas more than 750 new feature pictures were produced in each of the seasons 1926–1927 and 1927–1928 and over 800 have been announced for the current season (1928–1929). There is and has been an overproduction of short subjects, these amounting to about 2,500 short subjects in each of the said seasons and about 3,000 have been announced for this season. The average theatre uses 350 short subjects and comedies in the course of a year. During the 1927–1928 season 624 new reels were produced; for the current season 624 have been announced. The average theatre uses 104 news reels each season.

In negotiating and bargaining for contracts with exhibitors (the operators of theatres) in his territory, each branch manager finds all the branch managers and salesmen of the other distributors who are doing business in his territory competing with him on contracts for feature pictures, short subject pictures, comedies, specials, and news reels. Similarly, when an operator of a motion-picture theatre requires an individual motion picture for a date in the immediate future for which date no pictures included in his group contracts are available or needs a picture to complete his program, each distributor who has a picture in his branch office available for such exhibition competes for the business and seeks through its branch manager and salesmen to conclude a contract with such exhibitor. This is known in the trade as "spot booking." (Pet. p. 28.)

Referring to Paragraphs VI and VII of the petition and to the "continuous flow and course of interstate trade and commerce in motion-picture films" in the United States therein described, defend-
ants aver that at all the times mentioned in the petition
86 there has been and there is now in respect of such trade and commerce the keenest and most unrestricted competition between and among the defendant distributors and other distributors of pictures, all of whom have, during the said period, competed, and do now compete, with each other without reservation, restraint, or

restriction whatsoever and the defendants aver that the rules and regulations of the establishment and operations of a credit committee complained of in the petition have not at any time restrained, limited, or diminished and do not now restrain, limit, or diminish in any manner whatsoever such competition.

XIX

In explanation and justification of the rules and regulations for the establishment and operations of a credit committee and the acts of defendants complained of in the petition, defendants in this answer have set forth for the consideration of this honorable court the facts peculiar to the motion-picture industry, the nature and extent of the credit advanced by distributors to exhibitors in the ordinary course of business, the great number of changes of ownership of theatres occurring each year, the large losses incurred by defendants by reason of such changes of ownership, the absence of credit information and the need therefor, the purpose, nature, and effect of the rules and regulations for the establishment and operations of a credit committee, the existence of keen competition in the industry, the intent of defendants, and the end sought to be attained by them, and

Defendants deny that they have ever violated, or attempted or intended to violate, the Sherman antitrust act of the United
87 States and they deny that they have engaged or are now engaged in or intending or threatening to engage in any conspiracy in restraint of interstate trade and commerce in motion-picture films; and they submit, in the absence of any present, or threatened, or intended violation, this honorable court is without jurisdiction to grant the relief prayed for in the petition, or any part thereof, or any other relief in the premises; and they pray to be hence dismissed, with their costs in this behalf.

CADWALDER, WICKERSHAM & TAFT,
Solicitors for Defendants,
40 Wall Street, New York City.

GEORGE W. WICKERSHAM,
EDWIN P. GROSVENOR,
GABRIEL L. HESS,
CHARLES C. PETTIJOHN,
Of Counsel.

119531—30——4

88 *Exhibit 1 to answer*

STATEMENT SHOWING FOR 1927 NUMBER OF (1) THEATRES, (2) TRANSFERS, (3) PURCHASERS REFUSING TO ASSUME ANY PART OF CONTRACTS, (4) PURCHASERS ASSUMING ALL OR PART OF CONTRACTS, AND (5) AMOUNTS INVOLVED

Film board	Theatres	Transfers	Purchasers refusing to assume any part of contracts		Purchasers assuming all or part of contracts	
			Number	Amount	Number	Amount
Albany	450	48	21	$16,141.00	27	$35,750.75
Atlanta	773	102	43	62,185.75	59	91,678.00
Boston	1,165	42	12	36,204.50	30	147,213.65
Buffalo	533	71	34	92,294.95	37	138,700.21
Butte	181	28	6	7,176.75	18	15,843.70
Charlotte	506	110	65	52,756.00	42	51,878.48
Chicago	1,200	184	58	242,571.42	121	331,072.10
Cincinnati	1,700	189	38	128,830.59	151	134,757.84
Cleveland	700	121	54	175,812.32	63	276,681.28
Dallas	1,100	219	85	122,317.91	124	203,357.46
Denver	400	86	19	31,462.10	58	91,859.50
Des Moines	600	150	12	2,645.00	138	100,301.35
Detroit	656	130	15	58,349.70	115	515,481.32
Indianapolis	1,063	107	36	96,068.10	71	224,035.70
Kansas City	875	285	109	113,298.27	176	223,128.29
Los Angeles	475	79	12	43,246.25	67	177,937.75
Milwaukee	612	81	31	43,837,43	50	120,693.02
Minneapolis	No records available					
Memphis	657	104	57	41,628.64	34	52,801.75
New Haven	225	50	10	60,631.70	40	219,648.35
New Orleans	375	85	61	64,565.62	11	33,316.50
New York	1,276	190	38	77,120.04	152	418,498.49
Oklahoma City	647	99	38	111,351.27	61	111,053.25
• Omaha	530	689	111	29,346.22	379	85,278.06
Philadelphia	825	153	23	38,229.00	121	554,683.00
Pittsburgh	903	125	81	84,596.55	44	188,099.18
Portland	257	55	23	No record	17	No record
St. Louis	1,358	114	27	72,820.05	83	205,530.50
Salt Lake City	535	48	7	11,479.60	41	102,346.25
San Francisco	525	88	61	34,253.00	27	121,529.25
Seattle	431	54	27	85,552.85	27	88,408.99
Washington	600	64	23	74,775.30	41	124,262.28
Totals	22,133	3,950	1,237	2,111,547.88	2,425	5,185,826.25

• Cases where there were no contracts to assume, 199.

89 *Exhibit 2 to answer*

DIRECTION TO SALESMEN:[1] While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted, or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

[1] NOTE.—This direction to salesmen shall be printed upon but shall not be deemed a part of the standard exhibition contract.

STANDARD EXHIBITION CONTRACT

May 1, 1928

Agreement, made in one or more counterparts between _____, a corporation (hereinafter referred to as "the distributor"), party of the first part, and the exhibitor, hereinafter named and referred to as the "exhibitor," operating the theatre or theatres hereinafter designated, party of the second part, witnesseth:

The parties hereto agree as follows:

Warranty as to form

First. The distributor warrants that there is contained herein all of the numbered articles of the "standard exhibition contract" agreed upon by the contract committee appointed at the 1927
90 Motion Picture Trade Practice Conference (an authenticated copy of which has been filed with the American Arbitration Association). The distributor also warrants that any clauses in addition thereto appearing upon the schedule have been approved by such contract committee and that any additional clauses appearing upon a rider, if any hereto annexed, are not inconsistent with any such numbered articles. It is agreed that any clauses contained in such rider shall be of no effect unless such rider be signed by the exhibitor. It is agreed that any agreement contained in the schedule covering or describing what photoplays are licensed hereunder and in respect of any license fee, exhibition dates, and any provision permitted by the provisions of the numbered articles hereof shall not be deemd an additional clause for the purpose of this article.

License

Second. (a) The distributor hereby grants to the exhibitor, and the latter accepts, a license under the respective copyrights of the several photoplays designated and described in the schedule herein, subject to the terms and conditions hereinafter stated to exhibit (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said schedule provided. If more than one theatre is hereinafter designated, no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the schedule.

(b) In case any of such photoplays (except photoplays
91 which shall be "road shown") shall not be "generally released" by the distributor for distribution in the United States during the period beginning and ending , such photoplays

shall be excepted and excluded from this license unless the exhibitor shall give written notice to the distributor not later than thirty days after such last-mentioned date that the exhibitor elects to exhibit all of such photoplays hereunder. If such notice be given the distributor shall deliver and the exhibitor shall exhibit such photoplays as and when available for exhibition hereunder, except that any of such photoplays not so "generally released" within two years after such last-mentioned date shall be also excepted and excluded. The distributor may exhibit or license the exhibition of any photoplays excepted and excluded as aforesaid when and where desired by the distributor, and all claims or causes of action in respect thereof are hereby expressly waived by the exhibitor.

Time and place of exhibition

Third. The exhibitor agrees to exhibit under said said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the schedule or determined as hereinafter provided, and not to allow any positive print thereof to leave the exhibitor's possession during the period specified for the exhibition thereof by the exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such photoplays, and for no other purpose.

Payment

Fourth. The exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least three (3) days in advance of the date of shipment from the distributor's exchanged or from the last previous exhibition of the positive print thereof.

92 Payment on account

Fifth. Payment, if any, made upon the execution hereof by the exhibitor shall be deemed payment on account of the sums last payable hereunder.

Protection and run

Sixth. During the life of this contract the distributor agrees not to exhibit or license the exhibition of any such photoplays in conflict with the "run" or "protection period," if any, in the schedule specified. Unless otherwise provided herein, such "protection period" shall be computed from the last date of exhibition of each photoplay as fixed herein. If "protection" is granted hereunder against a specified theatre or theatres, which "protection" shall indicate that it was the intention of the distributor to grant such "protection" against all of the theatres in the immediate neighborhood or vicinity

of the exhibitor's theatre, then, unless otherwise provided in the schedule, such " protection " shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Delivery and return of prints

Seventh. The distributor agrees to deliver to the exhibitor during the period specified in article second hereof or otherwise in the schedule provided for a positive print suitable for exhibition of each of such photoplays for exhibition at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the distributor to the exhibitor at the distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the exhibitor shall be deemed delivery by the distributor to the exhibitor hereunder.

All deliveries other than at the distributor's exchange shall
93 be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the exhibitor or at the place where the exhibitor's theatre is located prints at least one hour before the usual time for the opening of the exhibitor's theatre.

The exhibitor agrees to return each positive print received by the exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the distributor from which the exhibitor is served or as otherwise directed by the distributor immediately after the last exhibition of such positive print in the same condition as when received by the exhibitor, reasonable wear and tear due to the proper use thereof excepted. The exhibitor agrees to pay all costs of transportation of such positive prints, reels, and containers from the distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the distributor's exchange, or, if directed by the distributor, to ship such positive prints elsewhere than to the distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the distributor therefor to a carrier designated or used by the distributor and proper receipt therefor obtained by the exhibitor shall constitute the return of such positive print by the exhibitor.

If the exhibitor fails to or delays the return of any positive print to the distributor or fails to forward or delays forwarding (as directed by the distributor) any such print to any other exhibitor, the exhibitor agrees to pay the distributor the damage, if any, so caused the distributor, and in addition the damage, if any, so caused
94 such other exhibitor as shall be determined by arbitration as provided for in article eighteenth hereof.

Selection or designation of play dates

Eighth. The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in the schedule, or otherwise agreed upon, shall be determined as follows:

1. The distributor shall mail to the exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the exhibitor, consistent with prior runs and/or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the distributor from which the exhibitor is served.

2. Within fourteen days after the mailing of such notice, the exhibitor shall select an exhibition date or dates within a thirty-day period commencing with such available date by giving written notice to the distributor of the date or dates so selected.

If the exhibition date or dates so selected by the exhibitor are not open for the exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty-day period are open, the exhibitor shall immediately select from such other open dates another date or other dates; failing to do so, then the distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the exhibitor by mailing fourteen days' notice thereof to the exhibitor.

95 (B) If no other date or dates within said thirty-day period are open (after the exhibitor's written request therefor), then the exhibitor shall designate the date or dates which shall be within a period not earlier than two nor later than six weeks from the last date of the said thirty-tday period by immediately giving written notice thereof to the distributor. If the exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B," the distributor shall designate the date or dates within the same period by mailing to the exhibitor fourteen days' notice of such date or dates.

If the exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the schedule granted to the exhibitor, then the distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated

by the distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule shall begin upon the fifteenth (15th) day of the thirty-day period specified in paragraph 2 of this article.

3. The exhibition date or dates of any of the photoplays selected by the exhibitor (if available) or designate as in this
96 article eighth provided or otherwise agreed upon between the distributor and the exhibitor shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a particular star or director, the exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss of and damage to prints

Ninth. The exhibitor shall pay to the distributor a sum equal to the cost of replacement at the distributor's exchange for each linear foot of any positive print lost, stolen, or destroyed or injured in any way in the interval between the delivery thereof by the distributor and the return thereof by the exhibitor in full settlement of all claims for such loss, theft, destruction, or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the exhibitor or any other party, nor release the exhibitor from liability arising out of any breach of this contract. The distributor shall at the option of the exhibitor repay or credit to the exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the distributor within sixty (60) days after the date when the same should have been returned hereunder. The exhibitor shall not be liable for the damage or destruction of any positive print, provided the exhibitor establishes such damage or destruction occurred while in transit from the exhibitor. The exhibitor shall immediately notify the distributor's exchange by telegram of the loss, theft, or destruction of or damage or injury to any positive print. If any positive
97 print shall be received from the exhibitor by the distributor or any subsequent exhibitor in a damaged or partially destroyed condition, it shall be deemed to have been so damaged or destroyed by the exhibitor unless the latter, prior to the second public exhibition thereof, shall have telegraphed the distributor's exchange that such print was received by the exhibitor in a damaged or partially destroyed condition and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Description and titles of photoplays; reissues

Tenth. The exhibitor shall not be required to accept for any photoplay described in the schedule as the photoplay of a star, or of

a director, or based upon a specified story, book, or play, or by an identifying description, any other photoplay of a different star or different director, or based upon a different story, book, or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the distributor to change the title of any of such photoplays or, as respects any photoplay based upon any story, book, or play prevent the making of any alterations, changes in or adaptations thereof.

The distributor warrants that none of the photoplays licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the schedule.

Assignment upon sale of theatre

Eleventh. This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the exhibitor sells or disposes of his interest in the theatre hereinafter specified he may assign this contract to the purchaser of such interest without the written consent of the distributor and such assignment shall
98 become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the exhibitor of liability hereunder unless the distributor consents in writing to release the exhibitor from such liability.

Exhibition and advertising

Twelfth. The exhibitor agrees to run photoplays (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the distributor, subject to requirements of duly authorized public authorities necessitating any change. The exhibitor also agrees to advertise and announce each photoplay as a " ." In all newspaper advertising and publicity issued by the exhibitor relating to said photoplays the exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the distributor.

All advertising accessories used by the exhibitor in connection with the exhibition of said photoplays must be leased from or through the distributor and must not be sold, leased, or given away by the exhibitor.

Unless this contract expressly provides for the "first run" in the city or town wherein the theatre hereinafter specified is located, the exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising, or otherwise prior to and until after the completion of the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said city or town.

The distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other "standard exhibition contract" with any other exhibitor.

Warranty as to advertising

Thirteenth. The distributor warrants that the photoplays herein provided for will not contain any advertising matter for which compensation is received by the distributor.

Taxes

Fourteenth. The exhibitor agrees to pay to the distributor upon demand any tax, fee, or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the photoplays and/or upon the sums payable under this contract by the exhibitor to the distributor. If under any statute or ordinance any such tax, fee, or other like charge is or shall be payable or paid by the distributor and the exact amount payable hereunder by the exhibitor is not therein definitely fixed or can not be exactly determined, then the exhibitor agrees to pay such part of any such tax, fee, or other like charge paid or payable by the distributor as shall be fixed in the manner determined by the then president of the American Arbitration Association.

Minimum admission charge

Fifteenth. The exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Delay in or prevention of performance

Sixteenth. In case the exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire insurrection, acts of God, the public enemy, public calamity or order of any court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the distributor. In any such event the time of the exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance thereof because of the happening of any such

cause or contingency is rendered impossible, in which case performance by the exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance. provided, that if such delay and/or prevention of performance caused as aforesaid shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months' period to the other party notice in writing to such effect.

In case the distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, court orders, censor rulings, delays of any common carrier, or of the United States postal authorities, delays in production, or failure of the producers of any of such photoplays to make or deliver them to the distributor or of any star or other performer to appear
101 therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the exhibitor. In any such event the time of the distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, provided, however, that in case any such delay or prevention shall prevent the distributor from "generally releasing" any such photoplay during the period specified in paragraph (b) of article second, the provisions of such paragraph shall govern, unless performance because of the happening of any such cause or contingency is rendered impossible, in which case performance by the distributor with respect to any such photoplay shall be waived. The resumption of performance by the distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the distributor shall deliver to the exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the exhibitor agrees to accept, pay for and exhibit any such photoplay at such later period pursuant to the terms hereof.

Waiver

Seventeenth. The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Arbitration

Eighteenth. The parties hereto agree that before either of them shall resort to any court to determine, enforce, or protect the legal rights of either hereunder each shall submit to the board of
102 arbitration (established or constituted pursuant to the rules of arbitration filed with the American Arbitration Association, 342 Madison Avenue, New York City, bearing date May 1, 1928, and identified by the signatures of the contract committee appointed at the 1927 Motion Picture Trade Practice Conference, a copy of which will be furnished to the exhibitor upon request) in the city wherein is situated the exchange of the distributor from which the exhibitor is served, or if there be no such board of arbitration in such city then to the board of arbitration in the city nearest thereto (unless the parties hereto agree in writing that such submission shall be made to a board of arbitration located in another specified city), all claims and controversies arising hereunder for determination pursuant to the said rules of arbitration and the rules of procedure and practice adopted by such board of arbitration.

The parties hereto further agree to abide by and forthwith comply with any decision and award of such board of arbitration in any such arbitration proceeding, and agree and consent that any such decision or award shall be enforceable in or by any court of competent jurisdiction pursuant to the laws of such jurisdiction now or hereafter in force; and each party hereto hereby waives the right of trial by jury upon any issue arising under this contract, and agrees to accept as conclusive the findings of fact made by any such board of arbitration and consents to the introduction of such findings in evidence in any judicial proceeding.

In the event that the exhibitor shall fail or refuse to consent to submit to arbitration any claim or controversy arising under this or any other standard exhibition contract which the exhibitor may have with the distributor or any other distributor or to abide
103 by and forthwith comply with any decision or award of such board of arbitration upon any such claim or controversy so submitted, the distributor may, at its option, demand for its protection and as security for the performance by the exhibitor of this and all other existing contracts between the parties hereto payment by the exhibitor of an additional sum not exceeding $500 under each existing contract, such sum to be retained by the distributor until the complete performance of all such contracts and then applied, at the option of the distributor, against any sums finally due or against any damages determined by said board of arbitration to be due to the distributor, the balance, if any to be returned to the exhibitor; and in the event of the exhibitor's failure to pay such additional sum within seven (7) days after demand, the distributor may by written notice to the exhibitor suspend service hereunder until said sum shall be paid and/or terminate this contract.

In the event that the distributor shall fail or refuse to consent to the submission to arbitration of any claim or controversy arising under this or any other standard exhibition contract providing for arbitration which the distributor may have with the exhibitor, or to abide by and forthwith comply with any decision or award of such board of arbitration upon any such claim or controversy so submitted within the number of days specified in article twenty-second opposite the name of the city in which such board of arbitration is located, the exhibitor may at his option terminate this and any other existing contract between the exhibitor and the distributor by mailing notice by registered mail within two (2) weeks after such failure or refusal, and in addition the distributor shall not be entitled
104 to redress from such board of arbitration upon any claim or claims against any exhibitor until the distributor shall have complied with such decision, and in the meanwhile the provisions of the first paragraph of this article eighteenth shall not apply to any such claim or claims.

Any such termination by either party, however, shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any such breach of contract by the other party.

The provisions of this contract relating to arbitration shall be construed according to the law of the State of New York.

Verbal promises; representations

Nineteenth. This contract is complete and no promises or representations have been made by either party to the other except as set forth herein.

Option to exclude if group licensed

Twentieth. If the license herein granted shall apply to an entire group of photoplays offered by the distributor to the exhibitor at one time, and not otherwise, the exhibitor shall have the right to exclude from this contract up to but not exceeding ten per cent of the total number of such photoplays, but only if the exhibitor shall give the distributor written notice to such effect at any time not later than fourteen (14) days before the date fixed for the exhibition of any such photoplay hereunder, and if at the same time the exhibitor shall pay to the distributor one-half of the license fee payable in respect of any such photoplay. In computing such ten per cent fractions of less than one-half shall be disregarded. If any such photoplay shall, because of such exclusion, be thereafter licensed by the distributor for the same run as that specified in this contract for exhibition at another theatre where such excluded photoplay
105 would not have been exhibited if not so excluded, then one-half of the license fee (up to but not exceeding the amount paid by the exhibitor to the distributor as a condition of so excluding

such photoplay) received by the distributor for such relicense, shall be credited to the exhibitor by the distributor.

If the license fee for any such photoplay so excluded is to be computed either in whole or in part upon a percentage of gross receipts of the exhibitor's theatre, then, for the purpose of computing such one-half of such license fee payable hereunder in respect of such photoplay, such gross receipts for each day that any such photoplay is licensed hereunder for exhibition thereat shall be deemed to be the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to such date of availability of such photoplay.

Racial or religious subject matter

Twenty-first. If the exhibitor shall claim that the exhibition at the theatre hereinafter specified of any photoplay licensed hereunder will be offensive to the public in the place where such theatre is located, because of racial or religious subject matter, and if the exhibitor shall give written notice to the distributor of such claim within a reasonable time prior to the date fixed for the exhibition thereof hereunder, such claim shall be immediately submitted to the board of arbitration herein specified. If such board of arbitration shall specifically determine that the exhibition of such photoplay at such theatre will be offensive to said public because of racial or religious subject matter, then such photoplay shall be excepted from this contract, and not otherwise. The distributor may exhibit or license the exhibition of any photoplay so excepted when and where desired by the distributor free from all claims of the exhibitor.

106 If the distributor shall be of the opinion that any photoplay licensed hereunder will be offensive because of racial or religious subject matter to the public in the place where the exhibitor's theatre is located, the distributor shall have the right to except and exclude such photoplay from this contract, upon condition that such photoplay shall not thereafter be licensed for exhibition in such place unless such racial or religious subject matter is eliminated therefrom, in which case such photoplay shall again be deemed licensed hereunder.

Acceptance of application

Twenty-second. This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the distributor and notice of acceptance sent to the exhibitor as herein provided. The deposit by the distributor of any check or other consideration given by the exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the distributor.

Unless notice of acceptance of this application by the distributor is sent to the exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the exchange of the distributor from which the exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto), said application shall be deemed withdrawn and the distributor
107 shall forthwith return any sums paid on account thereof by the exhibitor. Albany, 10; Atlanta, 20; Boston, 10; Buffalo, 10; Charleston, 15; Charlotte, 15; Chicago, 15; Cincinnati, 20; Cleveland, 15; Dallas, 30; Denver, 20; Des Moines, 15; Detroit, 15; Indianapolis, 15; Jacksonville, 15; Kansas City, 15; Los Angeles, 25; Little Rock, 15; Louisville, 15; Memphis, 20; Milwaukee, 15; northern New Jersey, 7; Minneapolis, 20; Butte, 30; New Haven, 10; New Orleans, 15; New York City, 7; Oklahoma City, 20; Omaha, 20; Peoria, 15; Philadelphia, 10; Pittsburgh, 14; Portland, Ore., 30; St. Louis, 15; Salt Lake City, 30; San Francisco, 20; Seattle, 30; Washington, D. C., 14.

This application and any application for other photoplays of the distributor executed by the exhibitor at the same time shall, for the purpose of this article only, be deemed one application unless an agreement to the contrary contained in the schedule is specifically signed by the exhibitor.

A copy of this application, signed by the exhibitor, shall be left with the exhibitor at the time of signing, and in the event of acceptance thereof as above provided a duplicate copy, signed by the distributor, shall be forwarded to the exhibitor.

APPROVED ADDITIONAL CLAUSES

Cancellation

1. If this contract designates certain photoplays by title, it shall be noncancellable as to such photoplays. If it embraces a series of photoplays not designated by title, it may be cancelled as to such series by either party after two photoplays of such series have been exhibited and paid for by notice in writing to the other party after playing the second of said photoplays, such cancellation to
108 take effect after ( ) additional photoplays shall have been exhibited and paid for.

Separate applications

2.[2] The distributor's right to approve or reject this application or any other application signed by the exhibitor at the same time, or

[2] NOTE.—This clause may be added to the schedule only in respect to photoplays produced by a producer not controlled by the distributor, and only if the distributor's contract with such producer provides that such pictures shall be sold separately and apart from other pictures distributed by the distributor, and shall be of no effect unless specifically agreed to in writing by the exhibitor.

any other time, is not dependent upon the approval or rejection by the distributor of such other application or this application.

Agreed to: ----------

Exhibitor.

Road shows

3. The distributor shall have the right to exhibit and/or cause to be exhibited as a "road-show" at any time prior to the exhibition thereof hereunder, such of the photoplays licensed hereunder as the distributor may from time to time select and determine, provided, however, that such road-show exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such photoplays shall be so road shown.

If any such road-show exhibition shall be in the city of New York, N. Y., and if the exhibitor's theatre be situated in a territory then served by the distributor's exchange or exchanges located in said city, the distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two
109 of such photoplays) so road shown in said city upon sending written notice to that effect to the exhibitor not later than eight weeks after the commencement of such road-show exhibition in such city, provided the distributor shall by like notice except and exclude such photoplay from all other contracts containing this clause and licensing the exhibition of such photoplay in such territory. Such exception and exclusion shall not be affected in case the distributor shall inadvertently omit to send such notice to any of such other exhibitors.

If any such road-show exhibition shall be in the city of Los Angeles, Cal., and if the exhibitor's theatre be situated in the territory then served by the distributor's exchange or exchanges located in said city, the distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two of such photoplays) so road shown in said city upon the same terms and conditions above provided for the exception and exclusion of photoplays road shown in the city of New York.

If and when any such road-show exhibition (except any road-show exhibition in New York and/or Los Angeles) shall be in the territory served by the distributor's exchange or exchanges serving the exhibitor's theatre, such photoplay so road shown in such territory shall forthwith be excepted and excluded from this license. The distributor shall send written notice to that effect to the exhibitor within fourteen (14) days after such road-show exhibition commences.

The distributor may so exercise such right to except and exclude any such photoplay from time to time in the respective territories,

as above defined, in the United States. Any photoplay so road
110 shown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such road showing of such photoplay in the United States, and such photoplay shall be exhibited hereunder as and when available.

For each photoplay that the distributor shall except and exclude, as aforesaid, the exhibitor is hereby granted the option to except and exclude from this license one of the other photoplays licensed hereunder, but only if the exhibitor shall give to the distributor written notice to that effect not later than fourteen days before the date fixed for the exhibition hereunder of such other photoplay. The distributor may exhibit and/or license the exhibition of any and all photoplays excepted and excluded from this license by the distributor and/or the exhibitor, as aforesaid, when and where desired by it, free from all claims of the exhibitor in respect thereof.

Percentage bookings

4. If this contract calls for payment or any part thereof computed upon the exhibitor's gross receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each photoplay for which payment is so required to be made. Should the distributor so require, such itemized statement shall be made upon forms furnished by the distributor. Upon such date or dates an authorized representative of the distributor is hereby given the right to verify the sale of all tickets of admission to said theatre and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine the exhibitor's books and
111 records in so far as they relate to such gross receipts. The distributor, or its authorized representative, shall also have access for a period of sixty (60) days after the receipt by the distributor of the final box office statement to all of the exhibitor's books and records for the purpose of verifying such box-office statement. The distributor agrees that any information obtained by it pursuant to the provisions of this clause will be treated as confidential, except in any arbitration proceeding or litigation in respect of this contract. The distributor agrees, unless such representative be a regular employee of the distributor, not to employ as such representative any person a resident of or regularly employed in the place where the exhibitor's theatre is located excepting with the consent of the exhibitor.

Liquidated damages; percentage bookings

5. If the license fee of any photoplay licensed hereunder is to be computed either in whole or in part upon a percentage of the gross

admission receipts of said theatre, and if the exhibitor fails or refuses to exhibit such photoplay as provided in this contract, the exhibitor shall pay to the distributor as liquidated damages for each day that the exhibitor fails or refuses to exhibit such photoplay (in addition to any fixed sums payable hereunder in respect of such photoplay) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such photoplay should have been so exhibited, provided, however, that if the exhibitor shall exhibit such photoplay for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed, upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereat of such photoplay.

112 On the same side of the contract upon which the exhibitor is required to sign, there shall be printed the schedule. In the schedule there shall be specified the license fees of the photoplays; the number of days for which each is licensed; the run and protection period, if any, agreed upon; any provision in respect of the exhibition date or dates of the several photoplays; the description of the photoplays, which shall be identified by specific designation of a star or director, or as based upon specific literary material or described by an identifying description of the story, provided that in long term and/or franchise and/or service contracts providing for more than one year's "releases" the photoplays may be generally described as photoplays released by the distributor or a like general description, and in such long term and/or franchise and/or service contracts the provisions of the standard exhibition contract may be incorporated therein. Any "short-subject" photoplay may be identified or described by brand or similar description.

All approved additional clauses, if any, added to the standard exhibition contract and any provision permitted by the provisions of the numbered articles shall be set forth in the schedule.

No reissues of photoplays or old negatives renamed shall be included in any group of new photoplays. No "short subjects" or "news reels" shall be included in any group of feature photoplays, and the licensing of "news reels" or "short subjects" groups shall not be made a condition of licensing the exhibition of feature photoplays or vice versa, provided that the distributor may include in any long term, franchise and/or service contract, feature photoplays and/or short-subject" photoplays and/or "news reels."

113 In United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF
AGAINST
FIRST NATIONAL PICTURES, INC., ET AL., DEFENDANT } E. 45–99

In equity. Suit by the United States under section 4 of the Sherman Antitrust Act of July 2, 1890 (26 Stat. 209), to enjoin the defendants, who are distributors of motion-picture prints for exhibition throughout the United States, from further engaging in a conspiracy in restraint of interstate trade and commerce, in violation of sec. 1 of said act.

Charles H. Tuttle, United States attorney, attorney for plaintiff (William D. Mitchell, the Attorney General; C. Stanley Thompson and Ralstone R. Irvine, special assistants to the Attorney General, of counsel).

Cadwalader, Wickersham & Taft, attorneys for defendants (Edwin P. Grosvenor, Arthur L. Fisk, jr., Gabriel L. Hess, and Charles C. Pettijohn, of counsel).

Opinion

THACHER, D. J.: Throughout the United States there are upwards of 25,000 motion-picture theatres at which motion pictures are exhibited for the entertainment of the public. To these theatres motion-picture films, i. e., the positive prints from which the pictures are projected upon the screen, are distributed by the defend-
114 ants and other distributors, who either produce the films themselves or procure them for distribution from other producers. The process of distribution is highly organized, necessarily so because each of the exhibitors must be regularly supplied with sufficient films to exhibit throughout the year constantly changing programs. In order to meet this demand each of the defendant distributors maintains exchanges in the principal centres of distribution throughout the United States, from which films are delivered to the exhibitors, and to which they are returned after exhibition.

In addition, the defendant distributors, in association with other distributors, are members of local film boards of trade scattered throughout the United States in thirty-one principal cities. The exchange managers, representing the defendant distributors in these various localities, are members of the film boards of trade, and other distributors not made defendants herein are also represented upon these boards. The distributors who have been made defendants herein distribute approximately sixty per cent of all the motion-picture films exhibited in the United States. Other members of the film boards of trade distribute approximately thirty-eight per cent of the films exhibited in the United States, and it is impossible for any exhibitor to secure sufficient motion-picture films for its

regular operation without dealing with one or more members of the film board of trade in the territory in which its theatre is located.

The value for exhibition purposes of a motion picture is highly perishable—that is to say, its first showing will command very much more public interest, and therefore a very much higher rental, than will subsequent exhibitions, and the theatres throughout the country are classified as "first-run" and as subsequent-run
115 houses, depending upon whether the particular theatre exhibits first-run pictures or those which have already been shown. Thus the usual rental in the first-run theatres in large cities amount to $1,000, whereas the second-run theatres in the same city will pay $400 to $500, and small theatres throughout the country will subsequently pay for the rentals for the same film as low as $5. For some time it has been the practice of the defendant distributors to announce in the spring of each year programs for distribution during the period of twelve months commencing in the following fall. Contracts for leasing these films to the exhibitors are made in the spring of the year. The agreements are of license for exhibition in named theatres. They contain provisions fixing the days upon which the films may be exhibited and covenants for the protection of the exhibitor not to license the exhibition of the same films in neighboring theatres during specified periods. The contracts also contain provisions under which, upon any transfer of the exhibitor's interest in the theatre, the transferee can without the consent of the distributor assume the obligations of the contract, and thereby become entitled to receive the films deliverable under it. The license fees are required to be paid when the films are delivered by the carrier. In contracting for their yearly requirements the exhibitors usually select from the programs offered by several distributors, arranging exhibition dates so that they may have continuously changing exhibition programs throughout the year. If the exhibitor requires additional pictures during the year, he secures these from the exchanges in his territory by "spot-booking" single pictures for exhibition in the immediate future. The delivery of films through the exchanges in performance of the exhibition contracts and
116 the redelivery thereof to the exchanges, is interstate commerce of a very substantial character. (Binderup v. Pathé Exchange, 263 U. S. 291.)

It appears that prior to the adoption of the credit rules which are here under attack the distributors suffered very substantial losses through the repudiation of their contracts by exhibitors scattered throughout the United States. In the smaller towns many of the exhibitors were irresponsible financially, and conditions arose very seriously affecting the industry through the transfer of theatres to new owners pending the performance of exhibition contracts. In such cases the new owner, refusing to assume the contracts of the former owner, was solicited by salesmen from various distributors to enter into new contracts, and the distributors whose contracts had been repudiated by the former theatre owner suffered serious damage,

rarely recoverable. Nor could the films thus thrown back upon the exchanges be readily placed in other theatres, because their programs had been arranged long in advance, and even when this could be done the films had generally become stale and commanded very much lower rentals than when originally licensed. This situation was seriously aggravated by a common practice among exhibitors in the smaller towns to evade their contractual obligations by colourable transfers of title to their theatres. In such instances the apparent purchaser (in reality a dummy for the owner) would contract for new pictures and the old contracts would be repudiated. These abuses were general and affected all distributors alike. The situation was one which could only be dealt with by joint action of the distributing group in protection of their interests as a group, and it was to relieve themselves of these conditions that members
117 of the film boards of trade throughout the country organized credit committees and adopted uniform rules and regulations for the establishment and operation of a system designed to eliminate these trade abuses, which in themselves were serious obstructions to the free flow of interstate trade and commerce.

The rules adopted are as follows:

"RULE I

"To correct abuses and unfair practices which now prevail in the motion-picture industry arising out of changes of ownership of theatres for the purpose of avoiding uncompleted contracts the president, with the advice and consent of the members, shall appoint a credit committee of three members to serve for a period of three months and thereafter until their successors are appointed to investigate and report to the members the names of all persons who have acquired by purchase or transfer theatres located in the territory within which this film board of trade operates.

"RULE II

"The secretary of this film board of trade shall be the secretary of the credit committee and shall perform the duties hereinafter specified and as the credit committee shall from time to time direct.

"RULE III

"All sales or transfers of theatres of which members receive knowledge shall be promptly reported to the secretary of the credit committee. Each such reported sale or transfer and such sales or transfers as shall come to the knowledge of the secretary shall be listed by the secretary and at such intervals as the credit committee shall determine a copy thereof shall be furnished to the members of this film board of trade for their confidential information. Such list shall be designated as a 'credit information list.' Forthwith upon

the receipt of each credit information list each member shall deliver to the secretary a statement of each existing contract
118 with such member for the exhibition of pictures at each theatre listed. Such statement shall contain (a) the name of the exhibitor with whom each such contract was made and if known the name of the new owner; (b) (1) the number of pictures and (2) the number of playing days contracted for; and (c) if known whether or not the exhibitor provided as a condition of the sale or transfer of his theatre for the assumption and complete performance by the new owner of all contracts so listed and if the new owner has agreed to such condition.

"RULE IV

"The secretary of the credit committee immediately upon the receipt of a report or learning of the sale or transfer of a theatre shall by letter request the new owner of such theatre to furnish to the credit committee within five days from the date of such request information and references to enable the credit committee to intelligently report to the members the credit standing of such new owner. For the purpose of securing such information the credit committee shall adopt a form of questionnaire.

"RULE V

"The credit committee shall meet at least once in each week to examine and report upon the credit standing of new owners of theatres and shall furnish to the members for their confidential information a copy of such report.

"RULE VI

"Upon the refusal or failure of the new owner of a theatre to furnish within the time above provided the information and references requested of such new owner the credit committee shall indicate such fact upon the credit information list opposite the name of such theatre by the words 'Credit information refused' (for which words for brevity the following letters may be used: 'C. I. R.').

"The credit committee shall also indicate on the credit information list every sale or transfer of a theatre which upon investigation the credit committee concludes upon information received and considered was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of pictures at such theatre. Such conclusion shall be indicated opposite the name of the theatre by the words 'Transferred or sold to avoid existing contracts' (for which words for brevity the following letters may be used: 'F. T.').

119 "The credit committee shall also indicate on the credit information list in a column headed 'Cash security' opposite

the name of each theatre listed (excepting, however, such theatres the new owners of which have agreed to assume and complete all existing contracts entered into by the prior owners and of which agreement notice has been given to or received by the credit committee) the amount of cash security not to exceed the sum of one thousand dollars ($1,000), which in the judgment of the credit committee is a reasonable sum which members shall require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre. The credit committee in determining the amount of such security shall consider the total of the rental of pictures likely to be contracted for and the frequency of the possession by the exhibitor of prints of such pictures.

"RULE VII (AMENDED)

"No member of this film board of trade shall enter into a contract or contracts for the exhibition of pictures at any theatre listed on the credit information list for a period of ten (10) days from the date of the first appearance of such theatre upon such list nor after such period of ten (10) days unless the new owner or lessee of such theatre shall have paid in cash to such member with whom such owner or lessee desires to contract for pictures the amount of security specified on the credit information list opposite the name of such theatre.

"This rule shall not be deemed to prohibit members from 'spot booking' pictures for exhibition at any such theatre during the said ten-day period or if the credit committee shall not have then reported upon the credit standing of the new owner or lessee of any such theatre to 'spot-book' pictures for exhibition until the credit committee shall have so reported.

"RULE VIII

"The credit committee may from time to time, upon satisfactory evidence of the credit standing of any new owner of a theatre sold or transferred, remove from the credit information list the name of the theatre owned or operated by such new owner, and in such case the members of this film board of trade shall be free to contract with such new owner for the exhibition of pictures at such theatre without requiring such new owner to deposit any cash security as a condition for the making of such contract.

120 "RULE IX

"Members shall upon demand of the credit committee furnish any information the credit committee may require to carry out its objects, which shall include the right of the credit committee to examine the books and records of members, but only with respect to any exhibitor

who has sold or transferred his theatre and has failed to provide for the assumption by the new owner of existing uncomplete contracts.

"RULE X

"Any member of the film board of trade who shall violate any of these rules or regulations with respect to the establishment and operations of a credit committee or who shall wilfully fail to report to the secretary of the credit committee the sale or transfer of any theatre of which such member has received knowledge shall be subject to suspension for a definite period or expulsion from membership. Any such member shall be entitled prior to being suspended or expelled to receive notice in writing of the violation complained of, and such notice shall specify the time and place for a hearing thereon. After such hearing the members of this film board of trade, by majority vote, shall determine whether or not the charge against such member has been sustained and, if sustained, whether such member shall be suspended for a definite period (and if so fix the period) or expelled."

It is alleged that in operation the exchange managers went beyond these rules and entered into supplemental agreements more drastic in their restraint upon dealings with new theatre owners. These allegations are not sustained, but the proof is clear that financial and moral responsibility were subordinate considerations, and the purpose in requiring deposits on new contracts with old theatres was to induce the new owner to assume and perform the old contracts. In operation the rules have generally been employed as a basis for negotiation with a view to fair adjustment of the interests of
121 all concerned, and the results have been beneficial to the industry. No exhibitor has complained, and no injury is shown either to individuals or to the general public. In justification of this combination and agreement between the defendants and other distributors United States v. The Fur Dressers & Fur Dyers Asso'n., Inc., et al., 5 Fed. 2d. 869, is cited as a decision of this court precisely in point. In that case fur dressers and dyers formed a credit association and agreed among themselves to render services only for cash to fur merchants who were delinquent in the payment of their debts. Bondy, J., held that such a combination was not an unlawful restraint of trade. In the instant case, however, the real purpose of the defendants was not to obtain security for the payment of rentals or other claims which might arise under their contracts, but their purpose was, by requiring security for the performance of new contracts, to induce the theatre owner to go on with the old contracts for the performance of which no security was required. The combination of which the Government complains in this suit therefore differs substantially from the combination considered by Judge Bondy, and it becomes necessary to determine whether by reason of its purpose or effect it is to be condemned as an unlawful restraint of trade under the provisions of the Sherman antitrust act.

Combinations and agreements designed to promote fair and honorable dealing and to correct fraudulent and irregular trade practices in themselves obstructive of trade are not unlawful if in purpose and effect they do not suppress competition, but merely regulate competition and thus promote the free flow of commerce. (Chicago Board of Trade v. United States, 246 U. S. 231; Standard Co.
122 v. Magrane-Houston Co., 258 U. S. 346, 355.) In Cement Mfgrs. Ass'n v. United States, 268 U. S. 588, 604, the court, in its opinion, called attention to the fact that it had in Swift & Co. v. United States, 196 U. S. 375, 395, approved a decree which provided that defendants should not be restrained "from establishing and maintaining rules for the giving of credit to dealers, where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers."

In the instant case all the badges of unreasonable restraint are lacking. There is no suppression of competition nor any attempt to monopolize. No one has complained except the Government. No injury to individual traders or to the public generally is disclosed. On the contrary, serious trade abuses have been eliminated, and both exhibitors and distributors have been benefited. Fraudulent transfers designed to avoid the performance of contracts involving interstate commerce have been discouraged. Exhibitors have been dissuaded from overbooking, a practice not infrequently indulged in to exclude the competition of new theatres. Reasonable arrangements have been encouraged under which persons acquiring theatres for which films have been booked long in advance have assumed the performance of existing contracts, thus avoiding serious interruption of interstate trade, inherent in the old abuses. There is no evidence of oppression, no intent to drive out or exclude anyone from the business of exhibiting motion pictures. The most serious complaint is that deposits in small amounts have been required from bona fide purchasers of motion-picture theatres as security for the performance of new contracts, and this requirement, insisted upon only if the new owner
123 wished to make new contracts without assuming the old, has been employed to induce the new owner to assume and carry out the uncompleted contracts of the former owner. The evidence abundantly discloses that in such cases the credit committees endeavored to make fair adjustments, realizing that it was in the interest of the distributors, as well as of the exhibitor, that this be done so that responsible and successful theatres might be established. The repudiation of pending contracts by a theatre owner almost always involved the interests of several distributors. These interests were substantial. During the year 1927 the aggregate rentals involved in uncompleted contracts of theatres transferred to new owners was $7,297,374.13, and in 1928 the sum was $9,843,970.23. It was natural and normal, therefore, that agencies representing all of the distributors should be employed to deal with such cases in an effort to arrive at an adjustment which should be fair and reasonable to all

concerned. In most cases the former owner who had repudiated his contracts was financially irresponsible, and the obvious business task involved was to persuade the new owner, who was continuing the same business, to make a fair adjustment of the old contracts. The cooperation of creditors to this end was not illegal, and the agreement of the distributors for the protection of their common interest to refrain from making new contracts without some security until fair and reasonable adjustments should be made, was not unreasonable in its restraint either upon the distributors or the exhibitors. The effect of what was done was that the new owner, upon making a small deposit of security, was free to contract for the delivery of any films with any distributor. No security was required of him on "spot-booking" contracts. He was free to take
124 delivery under the contracts of the prior owner of any films without giving any security. Distributors, it appears from the evidence, were always willing to meet the exhibitor's business necessities to scale down the contract requirements and, if desired, to substitute other pictures for those contracted for. And the credit committee undertook to make such adjustments in behalf of all the distributors involved. It was only in rare instances, usually either in cases where colourable transfers of title had been fraudulently made to escape the owner's contracts or in cases where the new owner preferred to comply with the demands for security, that such situations were not soon adjusted to the satisfaction of all concerned and the posting of security waived. It should be remembered that when a theatre owner who has contracted to exhibit films in his theatres disables himself from performing his contractual obligations by conveying his theatre to another, his deliberate breach of contract is apparent. The purchaser, who must be assumed to have knowledge of the business upon which he is about to embark, almost certainly knows that any going theatre has such contracts outstanding, and that the conveyance of the theatre without any assumption of these obligations will necessarily result in their breach. If it be said that such a purchaser is under no legal obligation to assume the improvident contracts of his predecessor in title, it may be answered that the willingness of men to deal with one another is properly influenced by an expectation of fair dealing without insistence upon the pound of flesh, and that one not disposed to attempt to reach fair adjustments can not fairly demand from those who are injured new contracts without some security. The defendants' agreement to
125 demand security was fully justified by their common interest in preserving the integrity of contractual obligations owing to them by others. Such restraints as may have resulted from what was done were incidental to this legitimate purpose, and therefore not unreasonable or unlawful.

This opinion may well be concluded, as was a recent opinion of the Supreme Court of the United States, with the statement: "To extend a statute intended to reach and suppress real interferences with the free flow of commerce among the States to a situation so

equivocal and so lacking in substance would be to cast doubt upon the serious purpose with which it is framed." (Industrial Ass'n, v. United States, 268 U. S. 64, 84.)

(Sgd.) T. D. THACHER,
U. S. D. J.

SEPTEMBER 25th, 1929.

126 In United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PETITIONER
AGAINST
FIRST NATIONAL PICTURES, INC., PARAMOUNT FAMOUS Lasky Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Universal Film Exchanges, Inc., United Artists Corporation, Fox Film Corporation, Pathe Exchange, Inc., F. B. O. Pictures Corporation, Vitagraph, Inc., Educational Film Exchanges, Inc., Motion Picture Producers and Distributors of America, Inc., Film Board of Trade of Albany, Atlanta Film Board of Trade, New England Film Board of Trade, Buffalo Film Board of Trade, Montana Film Board of Trade, Charlotte Film Board of Trade, Chicago Film Board of Trade, Cincinnati Film Board of Trade, Cleveland Film Board of Trade, Dallas Film Board of Trade, Denver Film Board of Trade, Des Moines Film Board of Trade, Detroit Film Board of Trade, Inc., Indianapolis Film Board of Trade, Kansas City Film Board of Trade, Los Angeles Film Exchange Board of Trade, Milwaukee Film Board of Trade, Memphis-Little Rock Film Board of Trade, Minneapolis Film Board of Trade, Inc., New Haven Film Board of Trade, New Orleans Films Board of Trade, New York Film Board of Trade, Oklahoma City Film Board of Trade, Omaha Film Board of Trade, Inc., Philadelphia Film Board of Trade, Pittsburgh Film Board of Trade, Portland Film Board of Trade, St. Louis Film Board of Trade, Inter-Mountain Film Board of Trade of Salt Lake City, Utah, San Francisco Film Exchange Board of Trade, Northwest Film Board of Trade, Incorporated, and Washington Film Board of Trade, defendants

In equity No. 45–99

Decree

Filed Dec. 23, 1929

127 This cause came on to be heard on final hearing upon the petition of the United States, the answer of the defendants, and the proofs, and was argued by counsel and briefs were sub-

mitted by the plaintiff and the defendants, respectively, from all of which the court is of the opinion that the plaintiff is not entitled to the injunction prayed for; that the merits of the petition were fully met and denied by the answer and were not sustained by the proofs, the court being of the opinion that the association between the defendants described in the petition and proofs and more particularly evidenced by Exhibit "A" of the petition entitled "Rules and Regulations for the Establishment and Operations of a Credit Committee" is not a combination or conspiracy to restrain trade and commerce in violation of the act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and it is, therefore, now

Ordered, adjudged, and decreed that the petition herein be, and the same hereby is, dismissed upon the merits.

T. D. THACHER,
U. S. District Judge.

128 In United States District Court

[Title omitted.]

Petition for appeal

Filed Feb. 21, 1930

The United States of America, petitioner, feeling itself aggrieved by the final decree made herein on the 23rd day of December, 1929, and filed and entered in the office of the clerk of this court on the same day, hereby appeals therefrom to the Supreme Court of the United States and prays that its appeal may be allowed and a citation may be granted, directed to the defendants, commanding them to appear before the Supreme Court of the United States to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings, and evidence in said cause upon which said decree was made and entered, duly authenticated, may be sent to the Supreme Court of the United States.

CHARLES H. TUTTLE,
United States Attorney.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
C. STANLEY THOMPSON,
Special Assistant to the Attorney General.
Dated, February 21, 1930.

129 In United States District Court

[Title omitted.]

Assignment of errors

Filed Feb. 21, 1930

Now comes the petitioner in the above-entitled cause and files the following assignment of errors upon which petitioner will rely upon its prosecution of the appeal in the above-entitled cause from the decree made and entered by this honorable court on the 23rd day of December, 1929.

1. That the United States District Court for the Southern District of New York erred in dismissing the petition herein for lack of equity.

2. That said court erred in not entering a decree herein in accordance with the prayer of the petition herein.

3. That said court erred in not holding that the defendants herein have engaged in an unlawful conspiracy to coerce and to require exhibitors of motion pictures in the United States acquiring a motion-picture theatre upon purchase or transfer to assume and to
130 perform incompleted contracts for the exhibition of motion pictures in such theatres existing at the time of the purchase or transfer between the former owner or operator of said theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade.

4. That said court erred in not holding that the defendants herein have engaged in an unlawful conspiracy to deprive exhibitors of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer of the right to have any court having jurisdiction of the question settle and determine whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractual obligations.

5. That said court erred in not holding that the defendants herein have engaged in a conspiracy in restraint of the interstate trade and commerce in motion-picture films by agreeing to adopt, to use, and to enforce the "rules and regulations for the establishment and operations of a credit committee," Exhibit A to the petition herein.

Wherefore petitioner and appellant prays that said decree be reversed and that said District Court for the Southern District of New York be ordered to enter a decree reversing the decision of said District Court in said cause and granting the petitioner the relief prayed for in its petition.

CHARLES H. TUTTLE,
United States Attorney.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
C. STANLEY THOMPSON,
Special Assistant to the Attorney General.
Dated, New York, February 21, 1930.

131 In United States District Court

[Title omitted.]

Order allowing appeal

Filed Feb. 21, 1930

The United States of America, petitioner, appearing by counsel, having presented and caused to be filed on the 21st day of February, 1930, its petition praying an appeal to the Supreme Court of the United States from the final decree made and entered herein on the 23rd day of December, 1929, and at the same time having presented and caused to be filed its assignment of errors, all as required by the statutes and the rules of the Court.

Now, therefore, on consideration thereof, it is hereby ordered that said appeal as prayed be, and the same hereby is, allowed, and the clerk of this court hereby is directed to transmit a duly authenticated transcript of the record, proceedings, and evidence in said cause to the Supreme Court of the United States.

WILLIAM BONDY,
United States District Judge.

Dated, February 21, 1930.

132 [Citation in usual form showing service on C. W. A. T., filed Feb. 21, 1930. Omitted in printing.]

134 In United States District Court

[Title omitted.]

Plaintiff's præcipe for transcript of record

Filed Feb. 21, 1930

To the clerk of the said court:

The United States of America, petitioner, desires the following portions of the record of the above-entitled cause to be incorporated into the transcript on its appeal to the Supreme Court of the United States, namely, the petition of the plaintiff, the answer of the defendants, the opinion of the court, the final decree filed December 23, 1929, petitioner's exhibits entitled and numbered as follows: Government Exhibit 4, containing pages 233 to 252, inclusive; Government Exhibit 44, containing pages 253 to 322, inclusive; Government Exhibit 8, containing pages 323 to 412, inclusive; Government Exhibit 18, containing pages 413 to 529, inclusive; defendants' Exhibits A, B, C, and D; the evidence taken before the court as it is stated in narrative form in the transcript herewith lodged; this præcipe, notice to counsel of filing of præcipe, and of lodgment of statement of evidence in narrative form and of the time and place when petitioner will ask the court to approve said statement of evidence; acknowledg-

ment of service of said præcipe and of said notice; the petition of the United States of America for appeal and its assignment of errors filed therewith, and all orders, citations, and decrees of said District Court made in connection therewith and in furtherance thereof.

CHARLES H. TUTTLE,
United States Attorney.
C. STANLEY THOMPSON,
Special Assistant to the Attorney General.

135 In United States District Court

[Title omitted.]

Notice of filing of præcipe and of lodgment of statement of evidence in narrative form

Filed Feb. 24, 1930

Please take notice that the United States of America, petitioner, this day has filed its præcipe with the clerk of the United States District Court for the Southern District of New York in Equity No. 45–99, United States of America against First National Pictures, Inc., and others, indicating the portions of the record to be incorporated into its transcript on its appeal, and has lodged with the clerk of said court a statement in narrative form of the evidence which it desires be included in its said transcript on its appeal.

You are further notified that on 17th *the* March *day of March*, 1930, at ten o'clock a. m., or as soon thereafter as counsel can be heard, at New York, in the southern district of New York, the United States will ask said District Court to approve said statement.

Yours, &c.,

CHARLES H. TUTTLE,
United States Attorney.

Dated New York, N. Y., February 21, 1930.

To:

CADWALADER, WICKERSHAM & TAFT,
No. 76 William St., New York, N. Y.
GABRIEL L. HESS,
469 Fifth Ave., New York, N. Y.,
Solicitors for the Defendants.

136 In United States District Court

[Title omitted.]

Acknowledgment of service

Filed Feb. 24, 1930

Service by receipt of papers stated by Government to be copies thereof with notice of entry is acknowledged of præcipe, of notice

of filing of præcipe and of lodgment of statement of evidence in narrative form, and of citation in the above-entitled cause this 21st day of February, 1930.

CADWALADER, WICKERSHAM, & TAFT,
76 William Street, New York, New York,
GABRIEL L. HESS,
469 Fifth Avenue, New York, New York,
Solicitors for the Defendants.

137 In United States District Court

[Title omitted.]

Order approving statement of evidence

Pursuant to the stipulation of the parties in the above-entitled cause filed herein, this eighteenth day of March, one thousand nine hundred and thirty, the statement of the evidence in narrative form attached thereto is hereby approved as being a true, complete, and properly prepared statement of the evidence received on the trial of this cause and said statement, the exhibits enumerated in the præcipe heretofore filed herein by the United States of America, and also Government Exhibit 24, and the proceedings, orders, motions, stipulations, and other proceedings in this cause enumerated or mentioned in said præcipe and this order are hereby approved as constituting the evidence and proceedings in this cause material or pertinent to the appeal herein, and they are hereby made a part of the record of the appeal.

THOMAS D. THACHER,
U. S. District Judge.

Dated, New York, N. Y., March 18, 1930.

138 In United States District Court

[Title omitted.]

Stipulation restatement of evidence

It is stipulated and agreed that the statement of the evidence herein in narrative form, which is attached hereto, be approved as being a true, complete, and properly prepared statement of the evidence received on the trial of said cause and that the same be substituted for the statement heretofore lodged with the clerk of this court.

It is further stipulated and agreed that in addition to the exhibits enumerated in the præcipe heretofore filed herein by the United

States of America, Government Exhibit 24 be included in the record on the appeal of this cause.

CHARLES H. TUTTLE,
United States Attorney.
CADWALLADER, WICKERSHAM & TAFT,
Attorney for the Defendants.

Dated New York, N. Y., March 19, 1930.

139 In United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PETITIONER
vs.
FIRST NATIONAL PICTURES, INC., ET AL., defendants
} In Equity 45–99.

Statement of evidence

Filed Mar. 19, 1930

Before Honorable THOMAS D. THACHER, District Judge

Appearances: Charles H. Tuttle, United States attorney, solicitor for plaintiff; C. Stanley Thompson, Ralstone R. Irvine, special assistants to the Attorney General, counsel; Cadwalader, Wickersham & Taft, solicitors for defendants; Edwin P. Grosvenor, Arthur L. Fisk, jr., and Gabriel L. Hess, counsel.

March 11th, 1929, 2.15 p. m.

Prima facie proofs: Colloquy between court and counsel

Mr. THOMPSON. In this case, your honor, the Government's main case will consist almost entirely of documentary evidence.

For several years investigations have been made by the agents of the Department of Justice, who have been given access to the files and records of these thirty-two branches throughout the country. Access to the files of the home office of the film board of trade in New York City has been given to them, and when requested, the files of the exchanges whose managers are members of the film boards of trade.

140 In the course of that examination a great mass of documentary evidence has been secured.

In order to save the trouble of identifying documents and introducing them in detail, an agreement has been reached with counsel for defendants, and this statement covers the agreement:

"All of the exhibits introduced by the Government are copies of papers taken by the special agents of the Department of Justice from

the files in the offices of the defendants and the film boards of trade, to which files the Government has been given the fullest access during the last four years, as stated in stipulation between counsel to be introduced.

"Counsel for the defendants desiring that the Government should have the fullest opportunity to put in any documents whatever that counsel for the United States may deem relevant, make no objections to the introduction of any of the exhibits now introduced, although counsel for defendants have not yet had an opportunity to read many of the documents, nor to the method of introducing them all in bulk without stating the purpose for which each of them is introduced, reserving, however, the right to object to the admissibility of any of them on the grounds of their irrelevancy or immaterialty and on the further grounds that they are not binding upon the defendants or the film boards of trade.

"The Government, of course, reserves the right in case specific objection is later made by counsel for the defendants to any of these papers introduced there to call witnesses to furnish a foundation for the introduction of those papers or of the originals of which they are copies or call witnesses to testify to the facts stated in the documents.

"Furthermore, counsel for the defendants requests the Government counsel to indicate which of the exhibits he offers for the purpose of attempting to prove the four alleged supplemental agreements described in the petition, pages 44 and 45, in order that defendants may know what, if any, explanatory or rebutting evidence may be necessary or advisable."

In this action I can state now that the material introduced in this credit committee case is only taken where it shows deviation from the actions in cases of the described rules and regulations for the operation of the defendant's committee.

141 Mr. GROSVENOR. In the opinion of counsel for the Government.

Mr. THOMPSON. In the opinion of counsel for the Government, of course.

Mr. THOMPSON. Counsel for the Government states that Government's counsel is not ready at this time to comply with the request of counsel for defendants to specify exhibits which counsel for Government offers for the purpose of attempting to prove the alleged supplemental agreements, but that he will subsequently, and before the writing of the briefs, specify to counsel for the defendants such exhibits as he offers for the purpose aforesaid, which specification shall be made part of the record.

In consideration of counsel for the defendants making no objection to the manner of the introduction of the Government's exhibits, counsel for the United States stipulates that the defendants shall have the right to call to the witness stand the secretaries of the

various film boards of trade to explain and amplify any of the matters referred to or mentioned in any of said exhibits and to testify in regard to said exhibits, as well as to the facts peculiar to the motion-picture business.

The COURT. Do I understand that these documents unless objection is made specifically on the record by counsel for the defendants are to be taken as evidence of the facts recited?

Mr. GROSVENOR. No.

The COURT. They are to be taken as evidence of the fact they were written by the persons purporting to write them?

Mr. GROSVENOR. Yes. I thought we could save any objection to the proof as to the letters having been written or where they came from; but, of course, I would not agree that they were proof of the facts stated.

For instance, a letter that you have in reply to some correspondence, and a few of them from exhibitors, which in many cases misstate the facts, I would not concede that these facts are correctly stated in any of his exhibits.

142 The COURT. Of course, the original letter written by a distributor, I suppose, would be taken as evidence of the facts recited?

Mr. GROSVENOR. That is all right.

The COURT. I mean it is really the proof, as I understand it, as if these letters were original documents written by the persons whom they purport to have been written by.

Mr. GROSVENOR. Exactly.

Mr. THOMPSON. Or, in other words, made in the usual course of business as it is done.

Mr. GROSVENOR. This waiver of counsel for the defendants being in consideration of the agreement that we have the right, as stated in this stipulation which counsel for the Government has read to the court, the secretaries from whose files these papers were taken and examine them in regard to the matters contained.

The COURT. That you would have a right to do anyway.

Mr. GROSVENOR. Yes.

Mr. THOMPSON. In reference to letters written by exhibitors which appear in these files the Government wishes to state that if any of these were obtained elsewhere than in the files of the film boards of trade, or one of the members of the film boards of trade, or some one connected with the defendants they were not intended to be introduced; if any such were pointed out they will be eliminated. But the Government contends that when, say, the credit committee is considering a matter and an exhibitor writes in his version of the facts that that letter from the exhibitor is pertinent evidence showing the statements made to the credit committee. Without, of course, intending that the letter be put in there as proof of the facts stated in the letter.

Furthermore, besides these files here there are three files
143 on which work is still being done to check them and eliminate any unnecessary material. Those will be ready to-morrow morning; and the Government merely reserves the right to introduce them at that time.

Mr. GROSVENOR. Introduce them on the record as one exhibit or separate exhibits?

Mr. THOMPSON. The best way would be to give each file a number.

The COURT. The clerk will mark each particular file as a separate exhibit.

Mr. THOMPSON. The clerk will mark each separate file as a separate exhibit, and the pages as pages of that exhibit.

Offers in evidence

Mr. THOMPSON. I offer in evidence Government's Exhibit 1, which is a questionnaire from Warner Brothers Pictures, Inc., to all branch managers and answers thereto from branch managers. This exhibit includes pages 1 to 47, inclusive. (Marked "Plaintiff's Exhibit No. 1.")

Mr. THOMPSON. Government's Exhibit 2, circular letter No. 820 of the United Artists Corporation, and answers thereto from branch managers. The exhibit contains pages 1 to 6, inclusive. (Marked "Plaintiff's Exhibit No. 2.")

Mr. THOMPSON. Government's Exhibit 3; papers from the files of the Albany Film Board of Trade, pages 1 to 5, inclusive. (Marked "Plaintiff's Exhibit No. 3.")

Mr. THOMPSON. Government's Exhibit 4, material secured from the files of the Atlanta Film Board of Trade, containing pages 232 to 252, inclusive. (Marked "Plaintiff's Exhibit No. 4.")

Mr. THOMPSON. Government's Exhibit 4–A, material secured from the files of the Atlanta Film Board of Trade. This, I take it,
144 should be the same exhibit. Including pages 253 to 322, inclusive. (Marked "Plaintiff's Exhibit No. 4–A.")

Mr. THOMPSON. Government's Exhibit 5, material secured from the files of the Montana Film Board of Trade, containing pages 1 to 85, inclusive. (Marked "Plaintiff's Exhibit No. 5.")

Mr. THOMPSON. Government's Exhibit 6, material secured from the files of the Charlotte, North Carolina, Film Board of Trade, including pages 1 to 75, inclusive. (Marked "Plaintiff's Exhibit No. 6.")

Mr. THOMPSON. Government's Exhibit 7, material secured from the files of the Chicago Film Board of Trade, pages 1 to 32, inclusive. (Marked "Plaintiff's Exhibit No. 7.")

Mr. THOMPSON. Government's Exhibit 7–A, material secured from the files of the Chicago Film Board of Trade, pages 33 to 44, inclusive. (Marked "Plaintiff's Exhibit No. 7–A.")

Mr. THOMPSON. Government's Exhibit 8, material secured from the files of the Dallas Film Board of Trade, pages 323 to 412, inclusive. (Marked "Plaintiff's Exhibit No. 8.")

Mr. THOMPSON. Government's Exhibit 9, material secured from the files of the Cincinnati Film Board of Trade, pages 1 to 17, inclusive. (Marked "Plaintiff's Exhibit No. 9.")

Mr. THOMPSON. Government's Exhibit 10, material secured from the files of the Des Moines Film Board of Trade, pages 1 to 30, inclusive. (Marked "Plaintiff's Exhibit No. 10.")

Mr. THOMPSON. Government's Exhibit 10–A, material secured from the files of the Des Moines Film Board of Trade, pages 31 to 174, inclusive. (Marked "Plaintiff's Exhibit No. 10–A.")

145 Mr. THOMPSON. Government's Exhibit 11, material secured from the files of the Kansas City Film Board of Trade, pages 1 to 35, inclusive. (Marked "Plaintiff's Exhibit No. 11.")

Mr. THOMPSON. Government's Exhibit 11–A, material secured from the files of the Kansas City Film Board of Trade, pages 36 and 37. (Marked "Plaintiff's Exhibit No. 11–A.")

Mr. THOMPSON. Government's Exhibit 11–B, material secured from the files of the Kansas City Film Board of Trade, pages 38 to 48, inclusive. (Marked "Plaintiff's Exhibit No. 11–B.")

Mr. THOMPSON. Government's Exhibit 11–C, material secured from the files of the Kansas City Film Board of Trade, pages 49 to 59, inclusive. (Marked "Plaintiff's Exhibit No. 11–C.")

Mr. THOMPSON. Government's Exhibit 12, material secured from the files of the Los Angeles Film Board of Trade, pages 1 to 22, inclusive. (Marked "Plaintiff's Exhibit No. 12.")

Mr. THOMPSON. Government's Exhibit 13, material secured from the files of the Milwaukee Film Board of Trade, pages 1 to 48, inclusive. (Marked "Plaintiff's Exhibit No. 13.")

Mr. THOMPSON. Government's Exhibit 14, material secured from the files of the Memphis-Little Rock Film Board of Trade, pages 1 to 36, inclusive. (Marked "Plaintiff's Exhibit No. 14.")

Mr. THOMPSON. Government's Exhibit 14–A, material secured from the files of the Memphis-Little Rock Film Board of Trade, pages 37 to 91, inclusive. (Marked "Plaintiff's Exhibit No. 14–A.")

146 Mr. THOMPSON. Government's Exhibit 15, material secured from the files of the Minneapolis Film Board of Trade, pages 1 to 82, inclusive. (Marked "Plaintiff's Exhibit No. 15.")

Mr. THOMPSON. Government's Exhibit 15–A, material secured from the files of the Minneapolis Film Board of Trade, pages 83 to 107, inclusive. (Marked "Plaintiff's Exhibit No. 15–A.")

Mr. THOMPSON. Government's Exhibit 16, material secured from the files of the New Haven Film Board of Trade, pages 1 to 14, inclusive. (Marked "Plaintiff's Exhibit No. 16.")

Mr. THOMPSON. Government's Exhibit 17, material secured from the files of the New York Film Board of Trade, pages 1 to 66, inclusive. (Marked "Plaintiff's Exhibit No. 17.")

Mr. THOMPSON. Government's Exhibit 18, material secured from the files of the Omaha Film Board of Trade, pages 413 to 529, inclusive. (Marked "Plaintiff's Exhibit No. 18.")

Mr. THOMPSON. Government's Exhibit 19, material secured from the files of the Pittsburgh Film Board of Trade, pages 1 to 20, inclusive. (Marked "Plaintiff's Exhibit No. 19.")

Mr. THOMPSON. Government's Exhibit 20, material secured from the files of the Portland, Oregon Film Board of Trade, pages 1 and 2. (Marked "Plaintiff's Exhibit No. 20.")

Mr. THOMPSON. Government's Exhibit No. 21, material secured from the files of the St. Louis Film Board of Trade, pages 1 to 117, inclusive. (Marked "Plaintiff's Exhibit No. 21.")

147 Mr. THOMPSON. Government's Exhibit 21–A, material secured from the files of the St. Louis Film Board of Trade, pages 118 to 211, inclusive. (Marked "Plaintiff's Exhibit No. 21–A.")

Mr. THOMPSON. Government's Exhibit 22, material secured from the files of the Inter-Mountain Film Board of Trade, pages 1 to 167, inclusive. (Marked "Plaintiff's Exhibit No. 22.")

Mr. THOMPSON. Government's Exhibit 23, material secured from the files of the San Francisco Film Board of Trade, pages 1 to 4, inclusive. (Marked "Plaintiff's Exhibit No. 23.")

Mr. THOMPSON. The Government rests, subject, as I have stated, to the agreement to put in these remaining files which will be completed by to-morrow morning.

Defendants' proofs

Mr. GROSVENOR. There are one or two stipulations that I will read to your honor. The first stipulation is this:

Stipulation re certain facts

The Government admits that—

During the past two years the Department of Justice has conducted an investigation and examination of the activities and operations of the thirty-two film boards of trade and of the members of such boards and of the operations of the thirty-two boards of arbitration, and of the defendant association, the Motion-Picture Producers and Distributors of America, Inc. During the past two years, the investigation has also covered the activities of the thirty-two credit committees of the film boards and the operation of the credit rules. During this entire period of two years the defendants and their counsel have cooperated with the department in every way possible to allow the department to develop the actual facts

148 fully and satisfactorily. The Department of Justice has been given access to all of the correspondence, files, records, minutes of meetings, and papers of the defendant distributors, the thirty-two film boards of trade and all members of such boards, and the thirty-two boards of arbitration, and the thirty-two credit committees in the offices of the film boards of trade or in the principal or branch offices of the distributors. The agents of the Department of Justice

have examined such correspondence, files, records, minutes, and papers at the office of the thirty-two film boards of trade and at the principal and branch offices of the distributors and at the office of the defendant association, the Motion Picture Producers and Distributors of America, Inc. Such special agents have made examinations at such times as they have been directed to do so by the Department of Justice. The agents of the department have entered the offices of the film boards wherever located whenever they pleased, have examined such files as they selected, and have always been accorded the privilege of copying any document they wished to copy, and during the last several months, in order to expedite the preparation of this case for trial, they have been permitted to take the original documents from the files and from the offices of the film boards of trade. The defendants have cooperated in every possible manner to facilitate the investigation being conducted by the Department of Justice and its examination of all records and papers of defendants and other persons interested in the motion-picture business, both prior to the commencement of this action and subsequently.

In pursuance of such investigation and examination, the agents of the department have taken from the files originals or copies of more than 30,000 documents relating to the activities of the film boards, the arbitration board, the credit committees, and the defendant distributors.

149 In the course of its investigation the agents of the department have conferred with and examined over 1,100 persons, including producers, distributors, exhibitors, and others interested in the motion-picture business.

If your honor will refer to the answer, page 25, the paragraph entitled "XVIII," that is the statement about competition. That there is competition and I will read the stipulation under which we prove Paragraph XVIII:

"Referring to Paragraph XVIII of the answer, pages 25–28, the Government admits, for the purposes of this suit only and for no other purpose, and without reference to any other suit or controversy relating to the motion-picture industry in which the United States may be a party, in which such other suit or controversy, if any, this admission and stipulation shall not be used or have any effect, namely that:

"At all the times mentioned in the petition there has been, and there is to-day, competition throughout the United States in the distribution of motion-picture films by the defendant distributors and by other distributors engaged in the motion-picture business. At all such times the defendant distributors have been, and they are to-day, competing with each other and with all other distributors, in the distribution of their pictures throughout the United States. (Answer, page 83.)

"In each of the States and parts of States in which the branch offices of the distributors operate as stated in the petition and in

which the branch managers of such branch offices solicit the business of the theatres located therein and distribute the pictures of their several companies all of the distributors distributing pictures therein, including the 10 defendant distributors, the 77 regional distributors named in the petition, and other distributors not named, are competing with each other in the distribution and for the exhibition of their pictures, and they have been competing with each other at all the times mentioned in the petition. (Answer, page 84.)

"Immediately after the announcement in the spring of each year of its program of pictures for the 12 months' period commencing the following fall, each distributor proceeds to solicit and conclude as many contracts as possible for the exhibition of such pictures with the thousands of exhibitors who own or operate the 22,000 theatres in the United States. Each contract is a matter of negotiation and bargaining between the distributor and the exhibitor. The great majority in number of the contracts of each distributor are solicited by the branch managers or by their salesmen, but the acceptance of each application for a contract is subject to the approval of the home or principle office of each distributor. (Answer, page 84.)

"In negotiating and bargaining for contracts with exhibitors (the operators of theatres) in his territory, each branch manager finds all the branch managers and salesmen of the other distributors who are doing business in his territory competing with him on contracts for feature pictures, short-subject pictures, comedies, specials, and news reels. Similarly, when an operator of a motion-picture theatre requires an individual motion picture for a date in the immediate future for which date no pictures included in his group contracts are available or needs a picture to complete his program, each distributor who has a picture in his branch office available for such exhibition competes for the business and seeks through its branch manager and salesmen to conclude a contract with such exhibitor. This is known in the trade as 'spot booking.' (*Pet., p. 28; answer, page 85.*)

"The foregoing admission is not to be used in any other suit or controversy to which the Government is a party, as the admission is made in this suit only. The Government does not admit that the above description applies to theatres owned or controlled by individual distributors. The stipulation does not apply to any of the agreements alleged in the petition."

That is to say, by that they mean that, of course, that the agreements and the rules to that extent that eliminate competition, that is not agreed upon. That stipulation fully covers the allegation that I have made in the answer and in the opening that there is competition throughout the industry.

If your honor will direct your attention to page 27 of the answer at the top of the page, beginning at the preceding page 26, I stated:

"The average theatre in the United States exhibits under 200 features during the course of a year or season, whereas more than 750

new feature pictures were produced in each of the seasons 1926–1927 and 1927–1928 and over 800 have been announced for the current seasons (1928–1929). There is and has been an overproduction of short subjects, these amounting to about 2,500 short subjects in each of the said seasons and about 3,000 have been announced for this season. The average theatre uses 350 short subjects and comedies in the course of a year. During the 1927–1928 season 624 new reels—"

151 (That should be "news reels;" not "new reels." There is an "s" omitted there.)

"—During the 1927–1928 season 624 news reels were produced; for the current season 624 have been announced. The average theatre uses 104 news reels each season,"

proving that the production figures are substantially as stated.

I will read the following:

It is stipulated by counsel that the annual publication known as the Film Daily Year Book is recognized in the motion-picture industry as the authority for statistical information relating to the industry and that counsel for defendants may read into the record from the Year Book the following statistics relating to the production and distribution of pictures in proof of allegations of the answer contained on page 85 of answer:

Feature releases

Year	Number released
1928	820
1827	743
1926	740
1925	579

The Year Book for 1929 states the titles, names of distributors, and release dates of 10,500 feature productions released between January 1, 1915, and January 1, 1929, thus showing an average annual production of 700 features during the past 15 years.

Short subjects

The Year Book for 1929 states (p. 480): "Short subject production of 35 distributors for the season 1928–1929, including news reels, serial, and regular releases, total approximately 3,000 subjects, counting each release as a separate subject."

152	Short subjects	1926	2373
		1925	2395

In proof of the allegation of the answer that no distributor produces enough pictures for the average theatre, the average theatre uses 200 feature pictures and 350 short subjects.

I have prepared a table showing the production of each distributor taken also by the Film Daily, which I will read. This is also in proof of page 13 of the answer.

The table that I read is the number of pictures released by the principal companies in 1928. I will give you that table, but I will read the figures.

Paramount Famous Lasky Corporation	64
Metro-Goldwyn-Mayer Distributing Corp	52
First National Pictures, Inc	53
Universal Film Exchange, Inc	56
United Artists Corporation	15
Fox Film Corporation	49
Pathe Exchange, Inc	53
F. B. O. Pictures Corporation	62
Vitagraph, Inc	26
* Educational Film Exchange, Inc	0
Columbia Pictures Corporation	32
Excellent Pictures Corp	10
Gotham Productions, Inc	11
Rayart Pictures Corp	26
Tiffany-Stahl Productions	27

The following companies produced news reels in 1928:
Pathe, two each week, total 104.
Fox, two each week, total 104.
Metro, two each week, total 104.
Universal, two each week, total 104.
Paramount, two each week, total 104.
Educational, two each week, total 104.

153 TERESE E. DRAZIN called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. GROSVENOR:

I am a lawyer by occupation. My present duties are those of assistant to Mr. Hess, the general attorney of the film boards of trade, at 469 Fifth Avenue.

The secretaries of the film boards of trade make reports to my office showing certain details regarding their business. At your request I have prepared certain exhibits which are tabulations made from those reports. The statement which you show me entitled "Defendants' Exhibit 1" is a statement showing the total number of transfers of theatres, the amounts involved in uncompleted contracts, etc., during the years 1926, 1927, and 1928, which was prepared in my office under my direction and was checked by me from the reports of the secretaries.

(Statement introduced in evidence and marked "Defendants' Exhibit A.")

Mr. GROSVENOR. There are certain parts of the answer that the Government admits. With reference to page 70, Paragraph XI of the answer, the Government admits the allegation as to the contracts which exist between the distributors and the exhibitors have always been by means of written contracts. The Government admits the allegation on page 71 of the answer that Exhibit B is a copy of the standard exhibition contract which is in general use in the

* This company releases short subjects.

industry, and that this form of contract substantially illustrates the manner in which the business has always been carried on.

(Copy of standard exhibition contract introduced in evidence and marked "Defendants' Exhibit B.")

The COURT. I understand, Mr. Thompson, you concede that the business has always been conducted under standard forms of
154 contract, such as Exhibit 2 annexed to the answer. Is that correct?

Mr. THOMPSON. Yes, your honor.

MARCH 12, 1929, 10.30 A. M.

TERESE E. DRAZIN, resumed:

Direct examination by Mr. GROSVENOR (continued).

I have prepared the statement for each of the defendant distributors showing the amount involved in uncompleted contracts with exhibitors for transferred theatres in the years 1927 and 1928, the contracts assumed all or in part by the purchasers, and the contracts no part of which were assumed by the purchasers. This statement was prepared in my office and was checked by me. (Statement introduced in evidence and marked "Defendants' Exhibit C.") The figure $721,074.28, referring to the Paramount Famous Lasky Corporation and showing the amount involved in uncompleted contracts for theatres transferred in 1927, was taken from the figures reported by the 32 film boards and is the showing for the entire country. Some of it was local to each of the boards. The same is true for substantially each one of the other names appearing on the list. The list shows the interest in each of the film boards throughout the country for each of the distributors whose names appear thereon. (Statement offered in evidence and marked "Defendants' Exhibit D.")

Cross-examination by Mr. THOMPSON:

In Exhibit A, with reference to the figure for 1928, showing 4,612 transfers, that includes the 422 transfers during the year in which there were no uncompleted contracts for the purchasers to assume. Those 422 transfers in which there were no contracts were not to my knowledge considered by the Credit Committees of the Film Boards of Trade. I think that that figure of 4,612 includes the 422 that appear in the note on the statement.

155 The figure $9,800,000 represents merely the value of the uncompleted parts of the contracts involved in transfers of theatres. The figure 2,304 is the number of purchasers assuming all or part of the uncompleted contracts of the previous exhibitors. That 2,304 represents the number who assumed contracts at any time during the course of the year. It is the first report at any time during the year.

I have no information that would show how many of the 1,653 shown for 1928 as the number of purchasers refusing to assume any part of the uncompleted contracts of the previous exhibitors were transfers where the purchaser was a chain of theatres affiliated with

or owned by any producing or distributing company. I assume the figure would include such purchasers, but I did not segregate the information to that extent. It involves all theatre transfers. The 145 shown in the last note on the statement as the number cleared during the year is reflected in the 4,612, the total number of theatres transferred. I have no way of telling whether that 145 is reflected in the total number of 1,653 given as those not cleared. I do not know which of those 1,653 were FT's or CIR's except the information at the bottom of the page, where I have classified that there were 974 CIR's throughout the year.

I understand as unfavorable credit rating either one of two cases, where the credit information is refused, or where there is what we list as FT, that is, fraudulent transfer. I do not know whether any film board has a different practice and will mark a new owner as having a favorable credit rating but with a certain amount of deposit required on new contracts. The reports sent to me would not show whether the figures from any board were used in either way, but the secretaries understand what we mean by favorable and unfavorable credit rating.

The total number of transfers given unfavorable credit ratings during 1928 was 1,149, 974 that were marked CIR and 175 that were marked FT. That is the total of unfavorable credit ratings given at any time during the year. The figure indicates the total
156 number of cases in which the first credit rating given the theatre was unfavorable. The reports on which I prepared this tabulation do not show whether or not the first ratings given by the credit committee were made within the time prescribed by the rules, but I assume that that is so. So far as the reports go there would be no evidence either way as to whether or not in any cases the making of any rating was held up for any length of time.

JOHN C. DOUGLAS, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. GROSVENOR:

I reside at Dallas, Texas. I am secretary of the Dallas Film Board of Trade and have been connected with the motion-picture business nearly 11 years. My first experience was as booker with Metro, a distributor. I was booker for Metro for three years. I was general manager for a regional distributor there with three offices in the South for a year, and my last position was as salesman for United Artists. All that time was spent in Dallas.

I have been secretary of the local film board since September 10, 1923. The film board was organized in September, 1923. My duties as secretary of the film board are to receive claims from both distributor members and exhibitors in the territory and to present those claims to the respective parties, trying to bring about their amicable settlement, and in case that can not be done according to the contract then to bring those claims before the board of arbitration at its periodical meetings. I am secretary of the board of arbitration.

I also am secretary of the credit committee. The distributor members of the board pass on the credits. I have been secretary of the credit committee and have attended all its meetings since it was installed in 1926.

I have made up a list of the theatres in the territory covered by the Dallas Film Board of Trade, which includes the States of
157 Texas, part of southern Oklahoma, and southwestern Arkansas. That territory is about 800 by 1,000 miles. Texas is 1,100 miles long and 800 miles wide in one place. The theatres in that territory are supplied with films sent out by the exchanges in Dallas, by the distributors whose names appear in the petition as members of the Dallas Film Board of Trade. There are 15 members of the Dallas Film Board of Trade and there are some distributors in the territory who are not members.

The majority of the theatres in that territory are located in the smaller towns, and they range in seating capacity from 150 seats to 3,000 seats. The three-thousand-seat theatres are in the larger towns. There are 1,072 theatres in the territory. I have made a list of the theatres and of their seating capacity, but I do not know in every instance the number of days they are open a week.

There are many transfers of theatres in that territory. I have kept a record of them for five years. For four years, beginning with 1924, the per cent of transfers was 23% of the theatres. I have just finished my report for 1928, and it has jumped to 27%. That makes 294 transfers this past year. In nearly every case of transfer there are contracts outstanding. Some of the theatres are transferred more than once a year, sometimes as many as six times a year. That usually occurs in the smaller towns distant from Dallas.

I believe that about 107 of those 251 transfers in 1928 assumed no contracts. Seventeen of those 107 who assumed no contracts were reported during the year as FT, 13 of those 17 who were first reported "fraudulent transfer" were cleared during the year, so that four remained on the FT list at the end of the year. Forty or 50 refused to give information on the first request. Most of those gave the information before the end of the year.

Q. Have the special agents of the Department of Justice examined your files?

A. Yes, sir.

Q. Please state briefly how long they were there and how
158 many of them there were.

A. The first time, in April of last year I believe——

The COURT. On Mr. Thompson's statement, I will assume that they had everything they wanted.

Mr. GROSVENOR. All right; they did.

I just saw in the last day the file of documents that the Government put in as exhibits.

The case referred to on page 326 of Government Exhibit 8 in reality is not a change of ownership. It is the Monarch Theatre in Georgetown which was operated for a number of years by this ex-

hibitor's father, who was a well-known and well-established exhibitor. His name was Goodlett. He died and he left the estate to his son, who was a young man. He operated the theatre for a year or so, more or less successfully, when competition was set up against him. I mean another theatre was set up against him and it made it pretty bad for him. Then he did not do the business he used to do. His great trouble was overbuying films. I suppose when he heard competition was going into his town he tried to buy more films than he could play. He got to the point where half a dozen or more distributors had claims against him. We checked his records up and we found that he had in some cases two or three pictures for one day. It got to such a state of confusion that he came to Dallas and met with the creditors who held those contracts and voluntarily agreed that I as secretary of the board straighten out his bookings. He wanted us to straighten him out so that we would eliminate these numerous duplicate bookings. In some place in these exhibits are records that he had 50 duplicate bookings; that is, he had 50 pictures booked on days when he could not have played them. I mean that he would only show one feature a day and he had two or three coming in. So I straightened out his bookings, allocated his playing time, and he assisted me to try to prevent him from getting into more trouble. He had enough service to run for a year and a half
159 if he kept the pictures he had under contract. To keep this exhibitor from buying new contracts and further complicating the matter and to keep him straightened out—I do not know whether this was the first or second time I straightened this exhibitor out; I know I did the job twice—the credit committee placed a $200 deposit on this exhibitor on any application for service he might make in the future, but that did not apply to existing contracts. That was merely a lever to prevent him from making new contracts until he had completed existing contracts.

There was an understanding with the creditors of this exhibitor to exchange new service for old in a like manner and that was done. There were quite a few eliminations made on the old contracts, and the price was adjusted and the exhibitor was straightened out. Six or 8 months later, either this time or another time, this exhibitor got into a second predicament and he finally sold the show to his opposition. I understand that he has dissipated all his estate that was left him and he is now in Dallas working for a film exchange.

Page 328 of Government Exhibit 8 is what we call a Film Board Bulletin that goes to the members of the film board of trade. I suppose that they are interested in paragraph 2 of this bulletin, which is merely a reminder to the members of the film board of trade in addition to the weekly credit report that a negro show in Conroe has changed hands, that the former owner was in default, and the status of the new owner had not been established by the credit committee. The former owner had not paid a claim rendered against him by the arbitration board, and the purchaser, S. G. Joseph, had not submitted his credit committee questionnaire. This town, Con-

roe, is about 250 miles from Dallas. Page 329 of Government Exhibit 8 is the film board minutes of January 17, 1927. I suppose this refers to the case of Ross Dixon of the Palace, Ritz, and Mission Theatres of Colorado, Texas. This is another case similar to that of Georgetown. There were four such cases as this that hap-
160 pened in Texas during the six years I have been with the film board of trade. This exhibitor overbought. One of these three theatres was formerly owned by another person that bought out his opposition. They bought too many pictures. I think at one time it became necessary to close one of these houses. By that I mean the economic conditions in the town made it necessary to close them. I did not have anything to do with that. The exhibitor closed the theatre voluntarily due to economic local conditions. There were a number of claims pending against this exhibitor for the fulfillment of contracts and there was quite a confusion in dates. These claims were all set for arbitration, but before they were heard Mr. and Mrs. Dixon came to Dallas and explained their predicament. Frankly they explained that they had tried to be good fellows and had bought too many pictures from the salesmen. They wanted their dates rearranged and a lot of duplication and confusion eliminated and they voluntarily agreed that I might do that. Mrs. Dixon asked me if I would rearrange their dates for them, consulting them, of course, and get the thing straightened out. These various claims that were pending before the arbitration board were withdrawn, a number of modifications were made in the contracts by the distributors, and the playing arrangment was materially changed. By this I mean that the contracts provided the exhibitors were to play so many pictures a month over a period of a year, say, and those contracts were extended in some cases from four to six months.

To prevent this exhibitor from going ahead and buying more pictures, which they said was their trouble—they said it was a passion with them—the credit committee recommended that they place a $250 deposit on any new application they made for service. That did not apply to existing contracts, and service on the existing contracts was not interrupted. The exhibitors did not object to that. They were glad to have it. They said it would keep salesmen out of their town for a while. There was no objection by the exhibitor in the other case. He was glad to get his booking straightened
161 out and to dispose of those numerous claims that were pending against him.

Q. Let me ask you this: Was there any security recommended to the members to demand in respect of any new contracts or was there an agreement that they should demand it then?

A. It was merely recommended that they could use their own discretion about it.

Page 330 of Government Exhibit 8 is a memorandum from the board to Paramount or any other member of the Dallas Film Board of Trade. The credit committee meets once a week on Fridays, and

this purchaser of this theatre was at Dallas the first part of the week and made out his credit committee questionnaire and stated that he wanted to spot book a picture from Paramount or some other distributor prior to the time that his credit report was being referred to the committee. This was merely a memorandum to Paramount or any other member that it was satisfactory to spot book the picture and that the purchaser's status would be passed upon at the next meeting While the investigation by the credit committee was carried on over a period of ten days, members spot booked pictures, as in this case, without demanding security. The agreement by the distributors applied to the delivery of pictures over the period covered by regular contracts.

Page 331 of Government Exhibit 8 is another Film Board Bulletin. That refers also to this Conroe-Ross Dixon case that I have just explained.

Page 332 of Government Exhibit 8 is a memorandum from the film board secretary to three exchanges reminding them of the status of the various purchasers of this theatre. This theatre has been owned for several years by W. M. Conroe, and I have known him to lease it to different parties, as many as six times a year, and they are the parties we refer to in this bulletin. J. Coats operated the theatre there several months, and he never did make a credit report
162 and his status was never passed upon. This bulletin merely reminded the members of the status and unsatisfactory condition of this theatre. This bulletin says in the first paragraph that the exhibitor's status has never been approved and applications for service should not have been accepted or at least not approved. That would not apply if security had been put up. That transaction was fraudulent, but even if it was fraudulent and the exhibitor put up security he got pictures. I will explain what I mean by "the contract had no standing according to law." When the credit committee rules were first adopted several years ago, there was no provision for any penalty against the members who violated the rules. To try to make a penalty which would tend to have the members regard the rules, the film board of trade passed a resolution that it would not recognize any contract that a distributor had taken in violation of the rules; that is to say, a distributor would be denied arbitration if a dispute arose under a contract taken in violation of the rules. The intent of that was to penalize the distributor and in no case was an exhibitor denied arbitration under a contract, whether it was taken in violation of the rules or not. To my knowledge this rule applied in no more than three or four cases, and it was abolished over two years ago. Page 333 of Government Exhibit 8 refers to the same theatre. In no case were these deposits recommended ever placed. To my knowledge the theatre was never without service. In fact, they had too much service. Competition was pretty active. The $50 recommended as the amount of the deposit would be far less than the aggregate rental in a contract for 20 to 40 pictures. It would not be

more than 10 per cent of the contract. Conroe is 250 miles from Dallas.

Page 334 of Government Exhibit 8 is a reference to a subrenting, or bicycling claim as we call it, the using of a picture not authorized by contract. The Queen Amusement Company had four or five theatres and he reported one as closed. I made an investigation and was down there at the place ten days. I went around to
163 see this theatre that had been reported closed. I had heard it was not closed, and I found that it was running seven days a week and using seven programs. It was not paying a part of the rentals. We took this up with the Queen Amusement Company, and they admitted that this theatre had been operating for 61 weeks, whereas they had told us that it had been closed. The exchanges interested in this got together with the theatre and they agreed to charge the exhibitor only the contract rental price for the service which he had used over that 61-week period. That amounted to $4,575. We found that the exhibitor had actually paid for about $1,000 worth of service and he paid the other $3,575 over a period of one year, disposing of the case and it was never arbitrated. That town is 300 miles from Dallas. This illustrates the difficulties of the distributors located in Dallas not knowing whether or not a report from a theatre that it is closed is accurate. The rest of this exhibit was merely a reminder to the members that the credit committee was a very effective thing. When we first installed the credit committee, some members did not seem to like it so well, and this was merely a reminder of what we had accomplished up to that time.

Page 335 of Government Exhibit 8 is nothing more than an amplification or explanation of the credit committee recommendations as they were laid down. I merely undertook to explain it to the members in this bulletin. Paragraph 7 of this page says that new theatre owners coming to Dallas to make contracts should not be dealt with in any respect until after the report by the credit committee. The one exception would be to get an assignment by both the former owner and the purchaser. The new purchaser can take an assignment of any of the old contracts. That paragraph does not mean that the new purchasers are not allowed to spot book. It means that they are not allowed to take new contracts over a period of months until they are passed upon by the credit committee. I was
164 merely trying to impress upon the members that when the purchaser of a theatre came to Dallas they should have him come to the film board office the first thing and make out this credit report. Page 336 of the Government Exhibit 8 refers to the Crescent-Garland. This is the third of those cases I was telling you about. That town is only 20 miles from Dallas. The credit committee in this case was acting more as a reform committee. It happens that I knew this exhibitor's wife for many years before she married. They were personal friends of mine. This theatre became overbought. It had more pictures than it could play and was in a

great state of confusion. The exhibitor left town, and his wife came in to the film board office and tried to get matters straightened out. The theatre was in the man's name so far as we knew. He owned it and managed it and the woman did not know anything about it. The man was away three months. He left without any notice to anybody and his wife knew nothing about the operation of the theatre and the contracts. She asked me to straighten out the bookings for her, which I did, and I prevailed upon a number of those creditors to eliminate pictures since they had too many and to make changes in dates and alter prices, and I got her straightened out in that way. She said she did not know when her husband would come back and take over the management of the theatre. She agreed that the placing of a $200 deposit on any new contract for service was entirely satisfactory to her because she felt that if he would come back he would get in the same trouble he had before by making more contracts than he could fulfill. The situation worked itself out all right, and the man has come back and everything is all right now. I believe the special agents of the Government interviewed those people. Page 237 of Government Exhibit 8 is nothing more than a letter from the New Orleans board advising that members of that board have contracts with the former owner of the Thelma Theatre at Orangeville, Texas, which theatre has
165 changed hands. That theatre is a little over 300 miles from Dallas. Some theatres are served by different cities, so that sometimes the film boards exchange information where their territories overlap. This is one of those cases.

It is customary with purchasers of some theatres—however, they do not often do it—to wire the film board where a theatre changes hands rather than to wire half a dozen exchanges. They wire the film board, knowing that the film board will notify its members. Page 338 of Government Exhibit 8 is nothing more than a wire from a purchaser of a theatre saying they have purchased the Star Theatre, effective the following Monday, and that they are not assuming any contracts. I sent a copy of that wire with instructions to the four exchanges holding contracts. Del Rio is 400 miles from Dallas. This man in his telegram stated that he was not assuming any contracts. If the distributors had sent pictures under the previous owner's contracts to the new purchaser, they would have been refused by the new purchaser and the distributors would have incurred a great deal of expense.

Page 339 of Government Exhibit 8 is a letter to the Dreamland Theatre, which situation was changing hands. In this letter I sent the purchaser a questionnaire to be filled out. That theatre is about 300 miles from Dallas. Page 340 is another letter referring to the same thing. This theatre had changed hands periodically, and this purchaser named Gabe Garrett was unknown in the trade. He was not assuming any contracts, so he reported in this questionnaire,

and the credit committee approved his status and recommended to the members that he place a $50 deposit on any new applications for service until such time as the purchaser became established.

Q. Did that request for a deposit apply to any of the contracts with the five distributors whose names appear on that exhibit?

166 A. No, sir; he did not place any deposits. He assumed a part of the contracts of the former owner. This recommendation was retracted a few months later.

Q. He established his credit?

A. Yes.

He assumed a part of the contracts of the former owner. This recommendation was retracted a few months later. The exhibitor established his credit. If the exhibitor had paid the $50, it would have been very much less than the probable rental for 20 to 60 pictures.

Page 341 of Government Exhibit 8 relates to the Family Theatre, which we considered a fraudulent transfer. This theatre was operated by a man named Gironard, who created quite a number of contracts. It was reported to be sold or leased to a party named Hall. We had heard of Mr. Hall before. As I stated in this letter, he had previously signed quite a number of contracts for a theatre which never materialized. However, no effort was ever made to enforce those contracts. In the credit questionnaire which the purchaser sent in he stipulated that he would assume the former owner's contracts. However, he later attempted to repudiate some of them and did. He did not place any security, but played service under certain of the former owner's contracts. It was our understanding that Mr. Hall was merely manager of the theatre for the former owner. In fact, we have in our files letters from Mr. Hall where he designates himself as agent. This theatre proved to be very uneconomical and was abandoned some months later, but not for lack of service.

Pages 342 to 346 of Government Exhibit 8 relate to the theatre in Seagraves, which is 400 miles from Dallas. This theatre changes hands periodically. That is brought out by these same exhibits.

This letter is nothing more than a reminder to members to
167 give closer attention to the credit committee rules and further advise them of the tactics being used by the purchaser. His status had been previously approved. By periodically I mean from three to six times a year. This man, Mr. Lindsay, did not put up a deposit under one of the contracts and he did not assume any contracts.

Page 343 of Government Exhibit 8 relates to the same theatre, but is addressed to a different gentleman a few months later. They are similar cases. We have understood that Mr. Brooks was merely operating the theatre for Mr. Lindsey, the real owner. Whether or not that is true, we do not know. Mr. Brooks did not assume any of the former owner's contracts. Mr. Brooks had never been in the

theatre business, at least not to our knowledge, and the committee in his case recommended a $100 deposit on new applications to guarantee his performance. The exhibitor put up this $100 deposit on a contract with one of our members, and he played service on that contract in Seagraves for several months, and then he relinquished his lease. Since that time Mr. Brooks has moved into three other towns and in each town he goes to he has the distributor transfer this uncompleted contract to his new town—that is, he carried the contract from town to town. When he eventually fulfills the contract, he will get his $100 back. The contract provides for exhibition at the theatre specified in it, and therefore a concession is permitted Mr. Brooks to transfer the contract. I do not believe there was any definite term whatsoever in Mr. Brooks' lease. I believe he sent in a lease which was a month-to-month proposition.

Page 346 of Government Exhibit 8 relates to Hebbronville. The Majestic Theatre in this town was formerly owned by W. A. Dannelly. He later sold the theatre to Miss Stroman. Miss Stroman did not assume any of Mr. Dannelly's contracts. She operated the theatre for a period of months, and then it reverted to Mr.
168 Dannelly, at which time we asked him to reinstate and fulfill the contracts which he previously had taken out. Since he had these contracts in his own name, the committee recommended that if he made any additional new contracts that he should place a $200 deposit. This Miss Stroman did not assume any of Mr. Dannelly's contracts when she came there and commenced to operate the theatre. The members did not require security of her, but gave her contracts. Then she turned the theatre back to Dannelly.

Paragraph 4 of this page 346 of Government Exhibit 8 refers to a man named Juan Barbera Lopez, of Mission, Texas. Mission is over 500 miles from Dallas. This man is a Mexican. Pages 347, 348, 349, and 350 and also 371, 372, and 373 of this exhibit relates to the same matter.

Page 351 of Government Exhibit 8 is about the Pastime Theatre at Estelline. Mr. Farley at one time owned and operated a theatre in this town. It was destroyed by fire, burning up several prints and films for which the Oklahoma board rendered an award. In the meantime a party by the name of Clifton & Whaley built a new theatre in Estelline, for which they made contracts and which they operated for several months. They reported they were leasing the theatre to Mr. Farley. These men were responsible cotton merchants, and they advised us that the lease provided for the assumption and the fulfillment of the uncompleted contracts. However, when Mr. Farley made his report, he stated he would not assume these contracts, and on the face of this the credit committee recommended a $200 deposit on any new applications for service. Mr. Farley, however, later assumed some of these contracts made by the former owners and in the meantime assumed a new set of contracts, and the deposit recommendation was eliminated. Mr. Farley is no longer in

this theatre. Clifton & Whaley were responsible merchants and were very anxious to see that Mr. Farley carried out his agreement with them by taking up their uncompleted contracts. I believe the
169 Government agents saw Mr. Farley. Page 355 is merely a letter from the Paramount office in Dallas, advising that they had a contract with Mr. Farley at the time he previously operated the theatre which was destroyed by fire. That contract was never enforced through the board.

Page 363 of Government Exhibit 8 refers to a Mexican theatre in Houston, Texas, which had been giving the exchanges quite a bit of trouble. This is a letter from the secretary to the purchaser, advising that in view of the report he made his status had been approved and a recommendation of $50 deposit on new applications made for service. That theatre had been transferred a number of times. In the same letter I asked the purchaser where the former owner was who had been established not more than a few weeks earlier. This Mexican theatre was 300 miles from Dallas.

Page 364 is a bulletin from the film board of trade where we sent the members of the film board of trade the new rules and regulations covering the credit committee which we had just received from New York.

Page 365 of Government Exhibit 8 is a letter from the cashier of a bank in Sterling City regarding the purchase of a theatre. This theatre was formerly owned by a Mr. Knight, who was postmaster at Sterling City and also operated this theatre. Mr. Knight was in default of the arbitration award and service was about to be suspended. We heard that the theatre was going to be sold to another party, and we sent this new party a credit questionnaire to be filled out. Sterling City is over 400 miles from Dallas, and I do not believe it is on the railroad. It is hard to get to. I told a certain member of the film board of trade about this reported transfer, and he said he was going to that vicinity and would look into it. When he got to San Angelo, about 50 miles from Sterling City, he put in a long-distance call, asking the operator to connect him with the owner of the local picture show. When the operator made the connection, she put on Mr. Knight, although at that time we had in our possession a credit questionnaire certifying that R. B. McIntyre was the owner of the theatre. This party questioned Mr. Knight about the probable sale of his theatre, and Mr. Knight inferred
170 that he still owned the theatre but would be glad to discuss the possibility of selling it to this party. Mr. Knight had the uncompleted contracts with nine distributors which appear on page 366. I am sure the rentals amounted to $2,500 or $3,000. This credit report of McIntyre, the purchaser, was referred to the credit committee, and especially after this conversation one of our members had had with Mr. Knight and especially since Mr. Knight was in default of the arbitration award, we felt reasonably certain that it was a fraudulent transfer.

By the COURT:

Q. It was not a transfer at all, was it?

A. They reported it as a transfer.

Q. I mean the same man was still running it?

A. They said that Mr. McIntyre was the purchaser.

Q. But he was a fake, was he not?

A. It developed that he was not. We had every reason to believe it was a fake since the award was not complied with and no contracts were to be assumed. You will see here on page 368 that I wired Mr. McIntyre, suggesting that he come to Dallas and let us get his status straightened out. $400 was placed against this purchaser, which I believe is the highest deposit ever recommended in any case of this kind in that territory. This Mr. McIntyre did not come to town for over three months. In the meantime he operated his theatre on service secured from exchanges in Dallas who did not belong to the board. After three or four months he did come to Dallas in company with an exhibitor who was well known to us, and we were then introduced to Mr. McIntyre for the first time. He was a minor, and upon the recommendation of this exhibitor that we did know the recommendation was retracted.

Mr. McIntyre was allowed to buy what service he pleased without any security whatsoever. He did not assume those other contracts. It developed that Mr. McIntyre had really bought the theatre. He showed us the cancelled check. However, he only ran the
171 theatre a few months more and sold it again to a man named Elliott.

Our report is that Knight in reality owns the theatre, that he got it back, but we can not prove it. The distributors are not demanding security of this new man. He is getting pictures without any deposits whatsoever. He did not assume McIntyre's contracts. McIntyre left uncompleted contracts with, I believe, two distributors.

By the COURT:

Q. Do you ever pursue these contractors who leave with these uncompleted contracts and give up their theatre and go out of business?

A. In only five out of a hundred cases would a suit be justified. Practically all of these theatres changing hands are lease propositions. The theatres in small towns where purchasers are reported, or they claim they are purchasers, are nothing more than lessees.

We would not be justified in going after these contractors to recover judgments. Suits would not be justified. I do not know of a single judgment that has been collected and we have had quite a few suits.

Page 370 of Government Exhibit 8 refers to the Camp Wood Theatre, which has been operated many years very satisfactorily by a man named Raney. It was our understanding that this theatre was owned by a polo club. We were led to believe this by Mr. Raney

signing his name in his contracts and letters as "secretary." So we inferred that Mr. Robbins was merely succeeding Mr. Raney as secretary. I have the names mixed. We assumed that Mr. Raney was succeeding Mr. Robbins as secretary. This theatre had been run satisfactorily in the past, and since Mr. Raney had no previous experience in the show business and since he stated he was not going to assume the existing contracts, the committee recommended a $100 security deposit on any new applications for service. Service was never discontinued. Mr. Raney in time assumed all of the existing contracts. Some modifications were made. The distributors
172 made adjustments by reducing the rentals. I so state in the fourth paragraph of this letter.

Page 386 of Government Exhibit 8 relates to a case of a transfer where the purchaser sent in his credit questionnaire saying that he was not assuming any contracts, that he had no experience in the theatre business, and, as I recall, he made no financial statement. The committee approved his status, recommending a $50 deposit. As I recall, he did not place the deposit with any distributor nor did he assume any contracts. He made a new contract with a member of the board without placing any security. The recommendation of the committee was overlooked.

Q. When you say you recommended a deposit of $50; is there any agreement that they must demand that or is there any fine or penalty if they do not get it?

A. No, sir; no penalty whatsoever.

Q. Then that is a departure in the way of the rules, is it?

A. Yes.

By the COURT:

Q. Is that recommended as security to the distributor, which he may waive if he does not wish to enforce it?

A. Yes, sir. I do not know whether he waived it or whether he overlooked it, but in this case he did not get it.

Q. The Government seems to assert that there was an intention of these parties to compel the assumption of the prior contracts; what have you to say about that?

A. You can take most any of these cases and you will observe the deposit is usually a maximum of $50. In most cases there are $3,000 or $4,000 worth of contracts involved. I do not think that recommending a $50 deposit on a contract with a distributor would coerce the purchaser into assuming a $3,000 or $4,000 contract. It would be a lot better judgment and more sensible to place a $50 deposit with two or three exchanges rather than obligating himself to
173 $3,000 or $4,000 worth of burdensome contracts, if they were burdensome.

Q. Would you say that there was an understanding with your members that those recommendations should always be followed or they were free to treat them as recommendations made for their own security, which they might waive?

A. That is the way we intend for them to regard it. We do expect the members to regard the recommendations of the credit committee, but there is no penalty for not doing so.

Q. Is there anything in this correspondence to show that you complained that they did not so regard them? And if they disregarded your recommendations or anything of that kind, is there any complaint about that?

A. No, sir; I do not believe there is.

There is a different situation if we decide that there is a fraudulent transfer and the credit committee recommends $100 or $200 deposit as a condition of making a new contract; then the member according to the prescribed rules is obligated to demand that security under penalty of a fine if he does not. That is the case where the credit committee after an investigation of all the facts finds that the transfer is for the purpose of avoiding uncompleted contracts. In that case there is an agreement to demand the security specified by the credit committee. Even in that case the agreement does not cover uncompleted contracts. That is to say, the distributors do not agree that they will demand the security on uncompleted contracts which the new owner may assume. The distributor may demand security only on new contracts. The fraudulent purchaser may assume all or any part of the existing contracts without security. The distributor then may demand security only on new contracts. The fraudulent purchaser may assume all or any part of the existing contracts without security. That is done repeatedly. You
174 will notice in every case that those recommendations, which are usually $50, are against purchasers indicated by the reports never to have been in the theatre business before. Very seldom do any of these purchasers make financial reports. Irrespective of whether contracts are being assumed or not, if the exhibitor is known to us in this or any other town his status is immediately approved. We are not interested in whether he is going to assume the contracts or not. We are interested in the purchasers.

It is not customary under the contracts for distributors to demand advance deposits for 20 to 60 pictures, to be given over a period of a year in these distant towns. The deposit system has virtually been abandoned. Deposits are demanded only in cases where the credit committee has recommended it in the case of an unknown purchaser.

The next page relates to the Palace Theatre, El Dorado, Texas, which was sold to a Mr. Bowen. We were informed by the former owner, Dixon, who also had a theatre in Brady, Texas, that he sold the theatre with the provision that these contracts were to be assumed and fulfilled by the purchaser. A credit questionnaire was received from the purchaser. He overlooked certifying that certain of the existing contracts would be assumed. So until there was a better understanding this $100 deposit was recommended. You will see how quickly this was adjusted. I advised him of that on April 29th. The next exhibit of May 11th shows it was merely an oversight. He had overlooked stipulating the assumption of this contract. I ad-

vised him of the fact that the recommendation would be retracted, and it was. The contracts were assumed and no interruption of service of any kind was had.

Page 389 refers again to this Mexican theatre in Houston under the name of the Hidalgo, sometimes known as the San Jose. This letter was to John P. Morgan, who was in some way connected with the city of Houston. I think I asked him to try to prevail upon the purchaser of the theatre to fill out the credit report. I also
175 asked Mr. Morgan, the former owner, whether any provision was made for the assumption of his contract. Mr. Morgan had written to me acknowledging a claim which a distributor had filed for a refused film. It seems that when this theatre changed hands no one was notified until the film was refused. The purchaser, I suppose, notified the distributor that he had taken over the theatre and was not assuming this particular contract. The distributor then filed a claim against the party who signed the contract, and it was presented to him. In a great many cases prior to the formation of the credit committees one of the usual ways in which the distributor heard about a transfer was through the rejection of the film when it was sent out to the country. Very seldom did we ever receive notice of a change of ownership, fraudulent or otherwise.

Page 390 is just another letter trying to prevail upon the purchaser to send in a credit report in the event he is taking over the theatre. This theatre was finally abandoned. It was an uneconomic situation. There was a finer and better Mexican theatre building just a few blocks from this one. I am sure the credit rules did not have anything to do with that. As far as I know service was never suspended at any time. These three or four predecessors referred to in these exhibits were always assuming a few of the contracts existing, which kept them in service.

Referring to the next page, Dangerfield, Texas, is about 250 miles from Dallas. This theatre was owned by Newson & White, according to our letters. We were informed that Mr. Newson would now be the sole owner. It seems he was going to repudiate the partnership contracts. We tried to save these contracts, and the credit committee recommended $500 deposit, believing Mr. Newson was responsible for the situation. The theatre was closed, as they said in this letter, and sometime later it was taken over by another one whose status was approved. The deposit is required on the
176 contract and not each film, and it is held until the exhibitor is cleared later by the credit committee. It generally is released before the contract is terminated. It is held by the distributor who makes the contract.

About $1,000 now is held by the distributors in Dallas under contracts of this sort on recommendations of the credit committee in connection with the transfers of theatres. We make these recommendations and in some cases the purchaser puts up a deposit, but we always retract these recommendations after sixty or ninety days

when the purchaser becomes established. I happen to know at this time that there is not more than $1,000 of those kinds of deposits held by the exchanges in Dallas applying to the 1,100 theatres in that territory and the 251 transfers during the year 1928.

The Southland Theatre is another one where the theatre changes hands periodically. The status of R. D. Wright was approved, recommending a $50 deposit. As I recall, he assumed part of the former owner's contracts. He operated the theatre a few months and sold it to another party. Southland is about 350 miles from Dallas. The theatre was sold several times a year. It was a transfer of the lease. These purchasers were all lessees.

The next two pages, pages 394 and 395 of Government Exhibit 8—the transfer of the Voga Theatre of Voga, Texas, never materialized. Farmer Jones was a fictitious name. The former owner closed the theatre and went to California. When he came back, he reinstated his contract and fulfilled it.

This next case, pages 396 and 397, was a theatre located in one of the new oil towns in West Texas, about 450 miles from Dallas. This was a fraudulent transfer. This theatre was owned by John Yates. I think Mr. Yates was in default on some arbitration awards and had some other trouble. When we were advised that the theatre was being sold to S. W. Estes, he sent us what was presumably
177 the original bill of sale which, as I stated in this letter, was never placed of record. As shown in the subsequent exhibits this Estes developed to be a brother-in-law of Mr. Yates, and our information was that Mr. Yates continued to stay at the theatre and operate it and that Mr. Estes was merely a myth so far as the ownership was concerned. Mr. Estes assumed a part of the contracts. No; as I recall, this was a case where he was approved and recommended that security deposit be required. That is not shown by the exhibits, but two members, Universal and Columbia, disregarded this recommendation and accepted contracts from Mr. Estes without asking for a deposit.

We did not know at the time that it was a fraudulent transfer. In any case the salesmen for these distributors had gone into this town and taken these contracts which had been accepted by the office. They became legal contracts regardless of our rules, and the distributors, I believe on my advice, were told to fulfill their contracts. Had they regarded the credit committee's reports which they received weekly as they should have, they would in time have been informed that Estes was a fraudulent purchaser, and if then they had accepted Estes' contract without the deposit they would have been assessed a fine. These two contracts were accepted prior to the time we recorded the sale as fraudulent. Since the contract was accepted, we instructed the distributors to fulfill them, which they did. This theatre changed hands several times after this. I suppose you know what Texas oil towns are. They are played out in a hurry in Texas, and this town, theatre and all, has been abandoned.

These pages, 398 and 399, relate to a town that changes hands periodically. It is something over 300 miles from Dallas. The theatre has been owned many years by a man named Vance who is in some other line of business. He leases the theatre periodically. Some times during the years he operates it himself. In this case
178 he leased it to this unknown party who was not going to assume any contracts. He had so stated and a $200 deposit was recommended. You will see though that two of the exchanges had adjusted the contracts satisfactory to the purchaser and they were assumed. No deposit was placed and there was no interruption in service. This party developed to be a minor. He only operated the theatre about six weeks when it reverted to the previous owner, Mr. Vance. There is nothing in our rules to prevent a distributor adjusting a contract of the previous owner with the new owner. It is done all the time.

Referring to pages 400 through 407, the Rialto theatre at Claude, Texas, was a reported change to Miss Susie Gray and was a fraudulent transfer. She was in default of awards in some other town where she operated a theatre, and the theatre she was supposed to be buying here was a theatre owned by her brother-in-law, J. M Wise. She stated that she was not assuming any contracts. There were quite a number of contracts, involving over $3,000, as I recall, and the credit committee recommended a $100 deposit on the new obligations only.

I do not believe Miss Gray ever took charge. Service was continued to the theatre and the next thing we heard, which these exhibits will show was during the same month or the month following, a party by the name of Joe Mitchell was reported to be signing contracts for this town. We later discovered that Joe Mitchell was to be house manager for the purchaser by the name of Snodgrass. Since they had attempted one fraudulent transfer we suspected this might be another and not knowing Mr. Snodgrass, who certified that he was in the restaurant business, $50 deposit was recommended in his case. We did not think or intimate that this was fraudulent, but we merely made a recommendation, in view of the fact that we did not know Mr. Snodgrass. He assumed no contracts. He placed this $50 deposit with three distributors and after ninety days the recommendation was retracted with the deposit refunded. Several exchanges got awards on the Wise contracts and some, I think, sued him.

179 The next page refers to a negro theatre which changed hands. This negro reported in his questionnaire that he was a porter in the depot and had no experience running a theatre and was not assuming any contracts. A deposit was recommended until such time as he became established. I think the deposit was only $50. That town is only 100 miles from Dallas. The man assumed a part of the contracts and a few months later the deposit recommendation was retracted. He was satisfactory. That was the Majestic Theatre. It later changed its name to the Shawnee.

Referring to pages 407 and 408, when this theatre at Orangefield, Texas, changed hands we were informed by the former owner, D. T. Lance, that he had sold his theatre with the provision that the contracts were to be assumed. When the credit questionnaire was received, there was some misunderstanding about who was the real owner or purchaser. A party by the name of Amerine, the purchaser, certified that he and Mrs. White assumed only part of the contracts, whereas the former owner said that the agreement was that all contracts were to be assumed. A deposit was recommended on new applications. The purchasers assumed a part of the contracts and later all of them and operated the theatre for a few months, then abandoned it, moving the equipment to Houston. This was another defunct oil town in Texas.

The next pages, 409 and 410, refer to the transfer of a colored theatre, the Dunbar Theatre, in Austin, Texas. There were two colored theatres in Austin, one known as the Lyric, owned by a negro named Gibbons; another known as the Lincoln, owned by Albert Lawson. Both of them were in trouble. I believe that between the two theatres they had over $5,000 worth of contracts. We heard the Lincoln Theatre was closing. The next thing that we heard was that a new negro theatre was opening in Austin. We sent a credit questionnaire and heard from a party by the name of Maroney,
saying that he was opening the Dunbar Theatre. We
180 found out later that the Dunbar Theatre was the theatre formerly known as the Lyric. They had only changed the name, and Lawson, who was the manager of the Lincoln Theatre just across the street, was to be the house manager for the new theatre. This all appeared to be fraudulent to us. Maroney was unknown to us. He stated his occuption was running a restaurant. We approved his status, recommending $100 security deposit which he placed with two exchanges. He did not assume any of the former owner's contracts, although one of the former owners was acting as his house manager. That deposit prevailed for several months, but we were still uncertain whether this was a fraudulent transfer or not. The negro advised us that he wanted to make other contracts in order to get a wider variety of service, and he wanted to know if the deposit could be retracted or reduced. The committee did not feel that the deposit should be retracted at that time since the purchaser had not been there long enough to become established, so they reduced the deposit to $50 instead of $100, and one of the exchanges that had a $100 deposit gave $50 to another exchange in order that the man might secure another contract. So the man had three or four different brands of service with I think $150 or $200 in deposits. After four or five months the recommendation was retracted and all the deposits were refunded. This man did not perform any of the contracts of the former owner and there was over $5,000 worth. He got his deposits back in four or five months. With reference to Petersburg, Texas, page 411, this $50 deposit was recommended be-

cause the purchaser was unknown to us in the trade. The theatre had been very satisfactory in the past, and the purchaser assumed no contracts as he certified. He placed this deposit with, I believe, two or three exchanges and secured service on those new contracts. No contracts whatever were assumed. Several thousand dollars of uncompleted contracts were involved. This recommendation
181 was retracted in about ninety days and the deposits were refunded.

The next page, 412, refers to a theatre formerly owned by Mack Cole, who operates a small circuit of theatres in Texas. He is considered a very reliable exhibitor. Mr. Cole sold this theatre to Urbanic and advised the film board that the agreement provided for the assumption of his contracts. When the purchaser submitted his questionnaire, he stipulated that he had had no previous experience in the theatre business and he did not commit himself to the assumption of the contracts, at least to all of them. So until the matter was better understood a $50 deposit was recommended. This deposit was not placed with any one. Service was continued on the existing contracts which the purchaser assumed, and in time he assumed all the contracts. The purchaser made adjustments on some of the contracts he assumed. That is a matter between the distributor and exhibitor.

The condition in the motion-picture business prior to the adoption of the credit rules, arising out of the changes of ownership of theatres, was very chaotic in my territory. As I explained a while ago, I was a booker and office manager at that time. There were a number of transfers, even more than there are now. Some of these transfers, of course, were legitimate and quite a few of them were fraudulent, either for the purpose of avoiding all or part of the existing contracts or because exhibitors who could not get reductions of rentals or modifications of contracts which they thought they should have would have one of these fraudulent transfers, selling the theater to a wife, brother, or sister, or somebody. At that time there was no bureau for collecting that information, and each distributor just relied on the information the best way he could get it.

These transfers were never questioned. Distributors thought the best thing to do was to recognize and respect the alleged purchaser and try to make another deal with him and try to salvage
182 something out of the contract. We very seldom heard of transfers until after they had taken place. Salesmen would go to a town and say they had heard that a theatre had changed hands. In only a small percentage of the cases were contracts assumed. I have known of cases where we got no notice whatever from the former owner or purchaser. A distributor would ship his film to the theatre according to contract as it was booked with instructions on the label to the agent that in the event it was refused he should wire the distributor for disposition. Express agents would wire in, " Your shipment of such a date has been refused and John Jones has bought the theatre." That was the way we got a great many of our notices of change of ownership. That was about all. We could not find

out whether the purchaser would assume the contract or not. After shipping four or five films and having them refused, we would withhold them. This was prior to the credit rules. There was no accurate record of theatres then, prior to the credit rules. The rules were adopted in January, 1926. I was secretary of the film board prior to the credit rules.

Now that a credit committee has been established, when we hear of a transfer, and we now usually hear from the former owner or purchaser or some salesman, a credit questionnaire is sent to the purchaser. Among other questions asked is whether the purchaser is buying or selling the theatre, on what date the transfer is effective. Another question asked is whether he will assume and fulfill the uncompleted contracts of the former owner. There is also a provision for a financial statement, but very few purchasers make this out. We are not very insistent about that. One of the vital questions asked is whether the purchaser was in the motion-picture business before.

A reported transfer appears on the succeeding credit report to all the members. That is their signal to notify the credit committee,
183 on what we call member statements, whether or not they have existing contracts with the former owner, and if so, for how many pictures. The members send in lists of their contracts and I keep a record of those attached to the questionnaire. The members do not report the rentals per picture, just the number of the pictures and the money value of the unfilled contracts. We do not require the rental per picture, and I doubt whether the distributors would give that information. In the meantime, the purchaser is carried on the succeeding reports CIR, meaning "credit information requested." We interpret that to mean either "credit information requested" or "refused." When the questionnaire is received, it is referred to the weekly meeting of the credit committee with all these member statements attached. The credit committee consists of three members of the film board of trade, and they are particularly interested in observing the previous business experience of the exhibitor, particularly to know if he has ever been in the theatre business before. If he has ever been in the theatre business before, some member of the committee or myself should know about his character and reputation.

If the purchaser has made a financial statement, we observe that, and that influences the recommendation of the committee. We are particularly interested in knowing if the purchaser is going to assume and fulfill the existing contracts, for the reason that in the smaller towns particularly there are always 150 to 200 pictures under contract. Sometimes all of them are dated for future exhibition, possibly six, eight, or ten months in advance. We want this credit information, and we want a declaration from the purchaser to know whether or not the contracts are going to be performed, so that we can notify the creditors whether they shall continue to reserve his

dates or withhold them and try to place them with some other exhibitor.

That information is necessary to salvage a contract either in
184 the same town, or if the date is not going to be respected it may be withdrawn and an attempt made to put the picture and print in some other town. Otherwise the print would remain in the distributor's vault and not earn any revenue and be a dead loss.

The credit committee consists of three branch managers of distributors and changes from time to time. When the credit committee makes its recommendations, it is recorded on the succeeding credit report. The committee, of coures, approves the purchasers with various status. A purchaser may be O. K., or there may be cases where they recommend deposits. Particularly if it is a fraudulent transfer, they might recommend a larger deposit. When the members receive a credit report they know what disposition is to be made of their existing contracts, and this is very vital to them. If the purchaser says he is going to assume the contracts, the members understand the pictures will be taken and they continue to reserve the bookings, which in the contract are for the benefit of the purchaser. If the purchaser says he is not going to assume the contracts, the members usually cancel the dates.

In some cases the purchasers of theatres come in to see me or the credit committee before the purchase and arrange for their pictures in advance. We try to encourage them to do that.

During the period of investigation the purchaser may continue service on the existing contracts. If the former owner had pictures dated, the distributors are not going to suspend the service or cancel those dates until they are told to do so, either by the former owner or the purchaser. So the purchaser may either continue the service on those contracts or he may spot book on his own account until the credit report is passed upon by the committee.

Where a contract is repudiated, the particular facts of the industry with regard to placing the pictures elsewhere in the vicinity are, for example: In a large town which is zoned an exhibitor
185 will buy a picture for a particular zone where he gets protection. Protection means the exhibitor buys a picture for a certain run with the understanding that the distributor of that picture will not play it in that particular zone for sixty or ninety days after his exhibition. So if the exhibitor had a contract in one of these zones and attempted to repudiate the contract, the contract itself would not only be a vital loss to the distributor but it might affect other succeeding contracts with subsequent-run exhibitors. We have had situations where the third-run account in a town sold out or had to undergo some changes, and he disrupted the situation in the entire town. It required the rewriting of every subsequent-run contract in that town. The town in question was Fort Worth and affected some fifteen or twenty theatres.

It is almost impossible to salvage a contract except in certain seasons of the year. Pictures are sold by the season and most exhibitors buy a season in advance. Every exhibitor does that, so when an exhibitor repudiates a contract it is very difficult to place that service with another exhibitor in that town or zone because that exhibitor has made the same contract for service as the other exhibitor.

Another thing is that a motion picture is worth the most money when it is new. When it is first released, it is the most valuable. The older it gets the less it is worth. So if a distributor did resell a picture, it would be months after the release date and for far less consideration than that originally called for under the contract or than they expected to get under their contract.

All these conditions resulted in heavy losses prior to the adoption of the credit rules. The effect of the three years' operation of the credit rules has been to minimize fraudulent transfers. We still have fraudulent transfers, but not in the great number we formerly did. The exhibitor now has a greater respect for his contract. I think that is the greatest accomplishment of the work of the
186 credit committee. Formerly in transfers not more than five or ten per cent of the contracts were ever assumed. In the Dallas territory now about fifty per cent of the contracts are assumed in transfers. Conditions before the establishment of the credit committee were such that the exhibitor did not have to exercise a great deal of judgment in making contracts. He could make a contract for all the pictures on the market and buy three times more than he could use, and if he wanted to get out of these contracts he would perform a fraudulent transfer or do something else. Under these credit rules the contracts are respected, and they have made the exhibitor a far more cautious and prudent business man than he was before. It is a great advantage to the distributors also, as I have explained. The agreement to demand security—that is, the amount of security specified by the credit committee—in the cases of fraudulent transfers discourages fraudulent transfers. When the fraudulent owner discovers he is going to have to secure the new contracts, he then may elect to fulfill the existing contracts. However, in some cases they have these fraudulent transfers and they elect—it would be better to place the security than to fulfill the existing contracts which, of course, they can do. That provision or agreement with respect to security does not tend to cut off the supply to the purchaser. If he does not want to put up security, service is always continued on existing contracts or whatever contracts he is willing to take.

We consider a fraudulent transfer is one where the party is selling his theatre, usually to an operator or some one employed about the theatre, or particularly a relative, for the purpose of avoiding either an arbitration award or for the purpose of avoiding the fulfillment of his existing contracts. There are now about 200 theatres more than there were when the credit rules were adopted.

I have attended all the meetings of the credit committee
187 during the three years that I have been secretary. I have attended all of the meetings of the arbitration board and all the meetings of the film board of trade during the six years I have been secretary. The relations of the different distributors with each other are through the film board. They do not, that I know of, have any dealings with such other outside of the film board. Nothing would have any official standing.

Q. Referring to the petition, page 44, of this alleged supplemental agreement, will you state whether or not there is in your territory any understanding or agreement between the members of the film boards of trade to refuse to enter into any contract with any new owner of a motion-picture theatre to license the exhibition of any motion picture or motion pictures and to transport, supply, furnish, and/or deliver any motion-picture film or films to any such new owner, unless or until said new owner has assumed and has agreed to perform each and every uncompleted contract for the exhibition of motion pictures in the motion-picture theatre acquired by him by purchase or transfer between the former owner or operator of such theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade?

A. There is no such agreement in the Dallas Film Board of Trade.

Q. Will you state whether or not there is any understanding or agreement between the members of the Dallas Film Board of Trade to retain on the credit information list the name of each and every motion-picture theatre acquired by a new owner by purchase or transfer unless or until said new owner has assumed and has agreed to perform each and every uncompleted contract for the exhibition of motion pictures in said theatre existing at the time of such purchase or transfer between the former owner or operator of such theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade?

188 A. There is no such agreement in Dallas.

Q. Is there any understanding or agreement between members of the Dallas Film Board of Trade to refuse to "spot book" any motion-picture film or motion-picture films with any new owner of a motion-picture theatre prior to the report of the credit committee upon the credit standing of such new owner, unless such new owner deposit security for the performance of each such spot-booking contract?

A. No; there is not.

Q. Has there been any such agreement?

A. No, sir.

Q. Or is there any understanding or agreement between the members of the Dallas Film Board of Trade to require each new owner of a motion-picture theatre to deposit security for the performance of each and every new contract for the exhibition of any motion picture or motion pictures at the theatre acquired by him by purchase or transfer, entered into by such new owner with any defendant dis-

tributor and/or any other principal of any member of such defendant film board of trade?

A. There is no agreement.

Q. Is there any agreement between the members of the Dallas Film Board of Trade to coerce and to require every exhibitor of motion pictures in the United States, acquiring a motion-picture theatre by purchase or transfer, to assume and to perform every uncompleted contract for the exhibition of motion pictures in such theatre existing at the time of such purchase or transfer between the former owner or operator of said theatre and any defendant distributor and/or any other principal of any member of any defendant film board of trade?

A. No, sir.

Q. Is there any agreement or understanding between the members of the Dallas Film Board to deprive every exhibitor of motion pictures in the United States acquiring a motion-picture theatre
189 by purchase or transfer, of the right to have any court having jurisdiction of the question settle and determine whether such purchase or transfer has been fraudulent and for the purpose of evoiding contractual obligations?

A. No, sir.

Q. As a matter of fact, do the rules in question, the credit rules, have any such effect?

A. No, sir; I do not know as they do.

In my territory the average exhibitor uses about 200 features a year—that is, about four changes a week. The average exhibitor uses about 300 short subjects a year. Most of the exhibitors use 104 news reels a year, two a week. The exhibitors run 200 features and they invariably run a comedy with each feature. That would make 200 short subjects, and a great number of the exhibitors, but not all of them, use the news reels, two a week, which would make 300 short subjects.

190 Cross-examination by Mr. THOMPSON:

With reference to what I have referred to, entitled "Credit Committee Ethics," the members at a meeting agreed upon the credit committee ethics, and then I worked out the statement entitled "Credit Committee Ethics," as evidencing the facts or things the members agreed upon. The letters in the file, Government Exhibit 8, which merely have the designation "Secretary" on them were written by me. The same applies to memoranda or other material in the file. Sometimes in my absence my secretary writes them, but I assume full responsibility for those letters.

The same men remain on the credit committee about six months. We try to pick as members of the credit committee men who are in town most of the time. You understand that some of the branch managers spend a good deal of their time travelling, and we must have at least two or three who are in town. During the time they serve they pass upon all the transfers of theatres. So it happens

that every member of the credit committee during the time he serves passes upon the validity of the transfers, irrespective of whether or not he has contracts with former owners in which he might be interested.

Q. And it frequently happens that two or even three members of the credit committee will have contracts with old owners when they are passing upon the credit standing of new owners?

A. That is probable.

The large chains of theatres operating in my territory are the Publix Circuit, the Dent, and the R. & R. Theatres. If they buy new theatres, they are required to have the approval of the credit committee. I would not say that in most cases we have not gotten credit questionnaires from those circuits. We had them in every case of Publix, and every case of R. & R., and we have them in a great many cases with Dent. There are cases where they have
191 not submitted information. We report theatres being acquired by these circuits the same as any others. They are designated CIR. Dent Theatres is a large and very responsible corporation. We do not show them any particular favoritism in this respect. There are other well-known established exhibitors in Texas who in acquiring theatres do not go through the formality of filling out this long tedious questionnaire that asks some 18 or 20 questions. The Dent Theatres are established in our territory and they have been there for years. They are financially responsible, and there are other exhibitors in Texas in the same category. When they take over a theatre they may write us a letter and confirm the report that they have taken over such and such a theatre and they may say they are or are not going to take over the contracts. We are not going to be stubborn and require them to fill out this report.

Q. The operation of the agreement to carry out the credit committee rules then applies only to the case of smaller theatres?

A. No; I would not say that.

Q. Is it not a fact that under the rules if any theatre changes hands the credit committee questionnaires has to be returned and a copy filled out, and the theatre is listed "CIR" with security?

A. According to the rules; yes.

Q. Do you or do you not follow the rules?

A. They are flexible.

Q. Is it not a fact that you do follow the rules almost always in the case of smaller theatres?

A. I would not stipulate smaller theatres. There are large theatres, large interests that have theatres who go through the same formality that the smaller theatres do. It is the smaller theatres, though, that change hands six times a year, and the larger one changes hands once and maybe never.

192 The Goodlett case, which was handled by the credit committee, was not a change of ownership. Under the credit committee rules the credit committee would not have any right to place any cash security requirement on that theatre.

Q. That requirement for cash security was placed by the credit committee by its own initiative, I suppose?

A. I would not say that the credit committee made that recommendation. If I am not mistaken it was at a meeting of the creditors of Mrs. Goodlett who suggested that.

Q. At a meeting of the creditors who were members of the film board of trade?

A. And that report appeared on a credit information report.

Q. Placing the security and asking him for what?

A. Any new application that he might enter into. He had one and a half years of service under the contract then. That is, at the time of this report.

I do not think field salesmen make any reports of the overbought condition of exhibitors. They have no way of knowing whether a purchaser has too many pictures on hand or not. They are only interested in selling their own products. They left it up to the branch manager as to whether or not he shall accept or reject applications.

We think that our film board of trade disseminates real credit information regarding a theatre operator. We think it is very vital when we report a purchaser of a theatre to be able to tell the exchange managers what knowledge we have of this exhibitor from past experience. Exhibitors, you know, are selling theatres here and buying them somewheres else. That information is given to the members of the film board of trade in the form of memoranda on the credit reports. We give the members the benefit of all the information that we have about the purchaser.

193 This paper is the form of credit report which I give to the members of the film board. There is no other kind of credit information report which is given out to the members of the film board. So all the credit information about any theatre owner is what is given on these reports unless some one calls the secretary for more detailed information. They often do.

We place the same construction on the key letters CIR that the rules provide and another one too. You will notice at the top of this credit report we designate "CIR" under the explanation as meaning credit information requested or refused. Under the credit committee rules when the name of the new owner appears with that letter CIR after the name, no member of a film board of trade is permitted to enter into a new contract with him. So it is right that all of those that have that CIR after them can not enter into any new contracts with members of the film board of trade. If there is no cash security designated, they could not enter into new contracts at all until their status is passed upon.

Q. If, in any instance, the notation of $200 or any such sum in the note for cash security, would that mean that the new owner could enter into new contracts by making that amount of security deposit for each contract?

A. That has to be qualified.

If it is a fraudulent transfer and the deposit is recommended, the distributor members of the board under the rules require a deposit and will suffer a penalty if they do not get the deposit as recommended. In other cases, as I have explained, this deposit is merely a recommendation of the committee. A distributor may demand it as his own discretion. We will show you cases where they have received a deposit and other cases where they did not get it.

194 Q. Is it not a fact that under the credit committee's rules, if any name appears on the credit information list no member of the film board of trade shall enter into a new contract with that man without getting the security noted?

A. "Should not," did you say, under the rules?

Q. Yes.

A. If it is a fraudulent transfer; yes.

Q. Is it not correct that the rules make no distinction between a fraudulent transfer and any other transfer appearing on the credit information list?

A. The rules refer only to the fraudulent transfers.

Q. Is it not a fact that every member of the film board of trade understands that he is not supposed to enter into any new contracts with any new owners who appear on the credit information list?

A. With any new owners?

Q. Yes.

A. Yes; they understand that. That is correct, according to the rules.

Q. And they follow that practice?

A. They should.

Q. Do they not?

A. Yes.

Q. Are there any instances where they do not do that and they always claim it is a mistake?

A. Yes.

Q. Are they not required to give all the evidence in their possession to establish the claim that it is a mistake?

A. We usually take their word for it.

Q. Do not all the members of the film board of trade keep close check on each other and report in to you if they find any other member selling a man who appears on the credit information list?

195 A. They do that.

Q. If you receive such a report, do you investigate the correctness of the charge? If a man has deliberately taken a new contract with any theatre which is listed on your credit information list, is not the person entering into that contract which requires the deposit subjected to some sort of penalty?

A. The rules provide so; yes. But we have never fined a member for this yet for this violation.

Q. If you do not fine them, they are censured probably at the future board meetings, are they not?

A. Yes.

Q. If the old owner of any theatre has unsatisfied arbitration awards against him, will the credit committee clear the new owner until that award is satisfied?

A. That all depends.

Q. I understood you to say this morning that under those circumstances that, assuming there was a fraudulent transfer to escape, the award——

A. If the former owner is in default of the award and we believe he is transferring his theatre for the purpose of avoiding that award, it is obvious under the contract that the exchange would not be obligated to recognize the assignment of that contract until the award was satisfied, or until either the former exhibitor or the purchaser, one, they care not which, placed the security authorized under the contract where the exhibitor is in default of the award.

Q. Under those circumstances the transfer would be given the credit rating of "F. T.," would it not?

A. You will observe we do not show "F. T." very much. You will find some use of the "F. T." note. There are a lot of these fraudulent transfers that are not designated here as "F. T." We do not sometimes show that a transfer is fraudulent until maybe they have accomplished the purpose or we might suspect it is
196 fraudulent, but we do not want to brand it that way.

Q. How would it appear on this list? It would be under the CIR or under the OK with security deposited?

A. When we finally receive the credit questionnaire from a fraudulent owner, or one that develops to be a fraudulent owner, he appears down at the bottom of these reports designated "OK," and he will have a deposit after him; and usually in the notations which accompany these bulletins I state that we believe it is a fraudulent transfer. Now, not in every case will the exchange refuse to recognize the assignment of the contract to the purchaser where the former owner is in default of an award. Many times these transfers are legitimate; and we would much rather see the purchaser in there and take a chance on him than we would on the irresponsible former owner. In that case we disregard the award and permit the purchaser to assume the contracts irrespective of the uncomplied with award.

There have been four cases here like the Dixon case in which the credit committee has taken charge of the affairs of some exhibitor. The credit committee has placed the matter in my hands and the distributor and the exhibitor in every case have authorized me to make out an allocation.

Q. Does the exhibitor ever authorize you or state that he was willing to have the deposit requirement placed?

A. Yes.

Q. In every case?

A. I would not say every case. I would say in the case of Garland, Mrs. Alredge. I suggested that to her and she acquiesced. She thought it was all right.

In the case of Dixon at Colorado, there was no objection to it. They had no occasion for making a new contract for the next year or so.

197 There is no provision in the credit committee rules which permits the credit committee to take charge of such matters. The Dallas Film Board or Credit Committee has no set policy or agreement that the credit committee acts in matters of that kind. Usually it is the creditors of the exhibitors who, realizing the confusion and tangle of it, ask the credit committee to act in the matter and make some recommendation. Listing all these cases on the credit information list with a security deposit recommendation never happens as a regular thing. It appears on the reverse of these reports.

On this statement there are the theatres and the amounts of security depend upon the amounts designated by these labels. On the back of this report there are the names of a number of theatres and various letters following the names, such as "A," "B," "C," "D," etc. That is just for brevity. We adopted this code: A means $50 recommendation; B means $100 recommendation; C means $150 recommendation; and D means $200 recommendation, etc. All those names under the heading previously asked about have a security deposit recommended.

Q. They must place that amount of security in order to enter into any new contracts?

A. Not in every case. Those are recommendations.

Q. In accordance with the recommendations?

A. In accordance with the recommendations?

Q. Yes.

A. If it is a fraudulent transfer; yes.

Q. In any case when a man's name and theatre appear upon this list are not all of the members of the film board supposed to get this security noted before they enter into any new contract?

A. We expect the members to respect the rules of the credit committee; yes, sir.

By the COURT:

Q. The rule seems to apply only to ten days. Do you disregard that limit?

A. We do on that, Judge.

198 Q. What?

A. In our board we do not place deposits, that is, cash securities, after CIR cases. In fact, that is the rule. We are not acting strictly in accordance with the rule. We take a purchaser on this report CIR until such time as he does make his credit questionnaire out.

Of course, in the meantime he can get service on the former owner's contract. He can spot book and get service on pictures from his own choices, or if he has not signed an application with one of our mem-

bers while he is still designated CIR they might accept it with a deposit in an amount that they might determine themselves.

Under these first paragraphs of our rules a member has the right immediately after the expiration of ten days when the first list is sent him with the notation CIR after some name, if the notation is made, to accept his application and take his security whether the same has been fixed by the board or not. The member has the right to accept an application immediately after a ten-day period. That has been done though in very rare cases. We do not exactly follow the rule in that respect. We do not tell film salesmen, who are in our business the order takers, who they shall sell to and who they shall not sell to. They take applications from these purchasers before their status is passed upon, and then we expect the branch managers, the member who represents that exchange on our board, to withhold that order or that application until the status of the purchaser is passed upon and approved by the credit committee.

Q. Even though it may take ten or twenty or thirty or forty days?

A. Yes. We have deviated from the rule in our territory on account of the vast size of it. It is possible in Texas for a salesman to be 600 miles from Dallas. He might be traveling through a town in a car and discover the day he got there that a theatre has changed hands. Strictly according to this rule, he should go away from the town and stay away for ten days; but we permit that salesman
199 to secure the application, but the branch manager can take no definite action on that application until the status is passed upon. He may, however, spot book the purchaser until the status is passed upon.

Q. Are not the salesmen working out of Dallas furnished with copies of the credit information list?

A. Not unless the managers give them the list. I do not.

Q. You do not know whether or not that is the general practice?

A. I would not say that it is.

When a theatre is marked O. K. with security deposit recommended, the credit questionnaire has been completely filled out, and it satisfies all the requirements of establishing credit. Under those circumstances there is no provision in the rules, aside from fraudulent transfers, allowing that security to be required. That again is a practice adopted by the Dallas board. That practice of using the credit committee procedure and the credit information lists is one established individually by the Dallas Film Board of Trade. That order (p. 330 of Government Exhibit 8) allowing an exhibitor to spot book all the pictures he wanted during the ten-day period was not required. The exchange managers do not think they have to have my permission to spot book any picture during the ten-day period. I believe this one is about the only exhibit of that kind that you found. I will say there is no information usually given when members are spot booking an account. When they are spot booking, they usually call me up and ask if it is proper to spot book because

they do not want some competing salesman to come in and tell these branch managers that Metro is after this account in violation of credit rules. If they do, I am in a position then to tell the complaining exchange that Metro was within its right in serving the picture because they spot booked it. So I usually know when they spot book. They tell me so that some one else will not be complaining about the situation. It is not necessary to give them any orders from the film board to spot book.

200 If you owned a theatre in some small town in Texas quite a ways from the exchanges, I think you would have two or three salesmen from the exchanges call on you each week. Not all towns are covered as frequently as that. Some towns are not covered by salesmen more than once or twice a year. The territory is divided in blocks. I imagine the average salesman will go over his territory four times a year, from four to six times a year.

Q. Would it be possible then for an exhibitor to keep running any length of time at all by spot booking unless he went to Dallas and called at the exchanges to get spot-booking contracts?

A. It would be possible; yes.

Q. Possible, but very difficult; is that right?

A. I should think that if the exhibitor persisted in ordering under spot booking over a period of months, and, of course, the reason he is spot booking is because he has declined to make out this credit report, I should think that the exchange would insist that he make himself known and that he fill out the questionnaire or that he come to Dallas and make arrangements.

Q. So you would think under those circumstances they would refuse to spot book?

A. That the exchange would refuse to spot book?

Q. Yes.

A. I have never known them to refuse.

Q. But as a practical matter it would be very difficult for an exhibitor to keep running by spot booking?

A. Yes.

Q. And also be a very expensive matter?

A. Yes, indeed.

Q. Would he not have to make most of his arrangements by going to Dallas to the exchanges?

A. He would not have to come to Dallas. He could telegraph or write.

201 By the COURT:

Q. Could he telegraph or write?

A. He can telegraph or write or a salesman will be there. It is very easy to get films. It is too easy.

The rule that contracts taken in violation of the credit committee rules had no standing before the arbitration board was abolished two years ago, but from the very beginning the intent of the rule was never to place any hardship on the exhibitor. We appreciated

that the exhibitor was not responsible for the distributor taking the contract in violation of our rules and we did not intend that he should suffer for an infraction by one of our members. The Dallas credit committee did not ever make any distributor demand security for the purpose of service under any such contract or demand security for starting service.

Q. In a case where some member of the credit committee thinks that the new owner of the theatre has agreed with the old owner to assume the contracts, do they force him to assume those contracts?

A. Where he thinks what?

Q. Yes.

A. No; we would have to have something more definite than that.

Q. But if you have any reason to believe that there is an agreement between the old owner and the new owner for the new owner to assume the contracts, does the credit committee enforce that agreement?

A. If we have good reason to believe that the former owner sold his theatre with the understanding that the purchaser was to assume his contracts, in that case we might get letters from the former owner stating that he has sold his theatre with that understanding and then the purchaser write in and deny it, or in his report overlooks or omits any certain exchange who had contracts with the former owner, until such time as there was a better understanding, the credit committee might recommend a deposit of $100 or so, until the purchaser has another opportunity to report on himself or we have recommended the disposition of the case. Where it followed,

202 as was shown in one of these exhibits, the purchaser merely overlooked stating that he was going to assume certain of the contracts, and when he admitted himself that he had merely overlooked it, and would assume them the deposit requirement recommendation was retracted.

Q. Is it not the practical effect of that procedure that the credit committee of itself takes equity jurisdiction to insure specific performance of the agreement to be assumed?

A. After they have made that agreement we assist them to. We can not make them; no. The purchaser by placing several deposits of $50 or $100 may evade all the former owner's contracts even though he agreed with the former owner that he would fulfill and discharge them.

Q. Is it not true as a practical matter that the new owner of the theatre that is being considered, that the credit committees very seldom urge them to make the deposit required to enter into contracts?

A. I should not say so; I should not think that a man in business would be under any great handicap by having to put up two or three deposits of fifty dollars each.

Q. Is it not true that he could not operate his theatres for any length of time with only two or three contracts?

A. No; a contract might have anywheres from twenty to one hundred pictures on it. It all depends upon the number of pictures.

Q. Probably placed over a period of a year?

A. Usually over a year.

Q. But if a man operates a theatre and changes four times a week, does he not probably have to have from ten to twenty different contracts?

A. No.

Q. As a matter of fact, does he not always have that many?

A. No; I would not say that; not that many. A small theatre has no business trying to deal with ten exchanges. That is too many.

203 He might have to have one contract for features, one for short subjects, and one for news reels, but he might have all that service from one exchange in one contract. He might buy a contract with fifty pictures. He does not have to make a cash deposit under each contract. Various contracts can be made with one distributor on the same day. In just one contract he might cover three or four units of service. In the ordinary course an exhibitor would not make a contract to-day for short films and a contract for others next week. If an exhibitor is making a contract with a distributor and arranging his contract for the year for once and all, he usually will contract for everything he wants at the same time. That is the way most of them do.

Q. You spoke of the deposit required by the credit committee always being less than the total film rental on the contracts. As a matter of fact is the total film rental, or does any film rental, have anything to do with this credit situation?

A. We consider it does.

Q. How is it so? Does not every contract require payment before shipment for each picture?

A. For the rental, yes, according to the contract. Sometimes before. In fact, otherwise it would be shipped C. O. D.

Q. The whole business of film rental, I understand, is a pay-in-advance proposition. They pay the rental in advance. That is what he pays.

A. That is what the exhibitor pays. That is the only liability that the distributor assumes.

So far as I know I have not made any misstatement of fact in my letters and memoranda in this Government Exhibit 8. They represent the facts and the matters discussed as I understood them.

204 Redirect examination by Mr. GROSVENOR:

These lists which are marked at the top "Confidential" go only to the members of the film board of trade.

The credit committee meets every Friday. They pass upon these cases as rapidly as the evidence comes in and dispose of them promptly. You will see from this exhibit we disposed of six in one meeting in one week. That means that those exhibitors gave credit

questionnaires and they were acted upon in the weekly meeting. Those others, the CIR, some of them have been on there for months. Those are the sort of cases where the transfers did not materialize. They are still waiting for credit information at this time. You will notice on this exhibit two cases where we have not shown the purchaser's name, and we have got question marks. We have heard it was transferred. We do not even know his name. When a star appears besides a theatre's name on this credit report, it means that that theatre is added to the report for the first time or that that theatre has taken on a new status. Any transfers reported are at the top of this credit report with stars. If no credit report is received, the succeeding week these names are dropped down lower and the new theatres that have changed hands during the current week are added to the top of the report with stars besides them.

Q. On this list that I saw there is only one name against whom security is demanded. There is only one against whose name security for $200 is placed. Is that the only one on that list with respect to whom security will be paid?

A. That is on credit report No. 81, where $200 was recommended. That was a fraudulent transfer. The Hempstead exhibits were among the originals but have been taken out the last day or so. I had hoped to explain it.

Those lists on the back of the credit report are probably of theatres who have submitted credit questionnaires and the credit committee has made recommendations for security. When that recommendation is retracted, it appears over here on the credit report, as
205 you will see on No. 81 "OK now," meaning that the original recommendation in that instance is now retracted. In this case it was out in less than a month after it was made.

Q. Are the members permitted to spot book those against whom CIR is placed?

A. Yes.

Mr. GROSVENOR. That is all.

Mr. THOMPSON. In order to keep the record clear, I might introduce one copy of this in evidence.

The COURT. There are several copies here of this thing.

Mr. THOMPSON. They are different ones. They are all just changed some.

Mr. GROSVENOR. Which one are you going to put in?

Mr. THOMPSON. I am putting this one in.

(Marked "Plaintiff's Exhibit 24.")

Mr. GROSVENOR. I have not seen this.

Q. Here is a man against whom a large amount of security is placed, of the Palace Rialto in San Antonio. Have you anything to say about that?

The COURT. Is that one of the things he went over?

Mr. GROSVENOR. No; I do not think it is. This is $1,000.

The WITNESS. No; I have not discussed that.

This man against whom security of $1,000 is placed for the Palace Rialto in San Antonio was a fraudulent transfer. That was an attempt to evade a contract. There was no real change of ownership in the case. The theatre never placed any deposit and service was continued. The theatre is now operating. The alleged purchaser did not turn it back. Those theatres in San Antonio were owned by a corporation and the man in charge of the corporation left. The corporation was never dissolved. They still own the theatres. When this new manager took charge he intimated at first that he was
206 going to repudiate the contracts of the corporation. Later he admitted that the Alamo Amusement Corporation was still in existence and the contracts were respected. San Antonio is one of our largest cities. I suppose in that case there must have been $25,000 worth of contracts.

Mr. EARLY L. COLE, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. GROSVENOR:

I reside at Atlanta, Georgia, and am secretary of the film board of trade located at Atlanta. I have held that position since November, 1923. I was not the first secretary of that film board. The territory covered by that film board is the State of Tennessee east of the Tennessee River, all of Georgia, all of Florida, and the greater portion of Alabama, all except about ten or fifteen counties in Southern Alabama. That territory is over one thousand (1,000) miles long and seven hundred (700) miles wide. There are between seven hundred (700) and eight hundred (800) theatres in that territory. I do not remember the exact number. There are quite a bunch of transfers there in the course of a year. These transfers are principally of the smaller classes of theatres. In practically every instance there are contracts outstanding when a theatre is transferred in my territory.

Prior to the credit rules, January, 1926, when you got a contract you did not know whether you had one or not, because exhibitors, especially among smaller theatres, were constantly changing hands. The companies paid no attention to whether it was a legitimate transfer or not and simply cancelled the contracts off their books. There was so much room for fraud because a man just dumped his contracts anyhow when they sold out, and the companies lost a lot of money in the way of film rental and of expense of sending salesmen into these hick towns to get contracts which would sometimes change hands as many as six times in a year.

207 Since the credit committees have been operating, the small owners by a system of education have been able to see that they could transfer their contracts to the new owner without working any hardship on him and not only working no hardship on him but relieving themselves of their obligations under the contracts. If an exhibitor sells a theatre without making arrangements for taking care of his contracts, the old owner is still responsible for the amount of the film rental involved under these contracts. As I recall,

there were two hundred and fifty (250) transfers last year in my territory.

I am the secretary of the credit committee and I have attended all of its meetings since the adoption of the rules three years ago.

I have looked at Government Exhibit 4A which contains documents relating to the transfer of a couple of theatres in Alabama. These theatres are the Ensley and Franklin in Ensley, Alabama. R. B. Wilbey owned and ran the Ensley Theatre and Joe Steed owned and ran the Franklin Theatre. Steed and Wilbey conceived the idea of forming a corporation consisting of Steed and Wilbey and taking over both theatres. Mr. Wilbey was president of the new company and Mr. Steed was treasurer and they owned the company. The Ensley Theatre had under contracts outstanding 406 features, 369 short subjects, 64 news reels, 1 serial, and two unplayed episodes of another, money value aggregating $12,010.75. These contracts were with seven different distributors. The Franklin had 488 features, 391 shorts, 230 news, and 3 serials, aggregating $18,588.50.

In the questionnaires which they signed for these two theatres they rejected all contracts for both theatres. Mr. Wilbey came before the credit committee and agreed with them that he would see that the corporation, of which he was president, carried out, played, and paid for the contracts which he had personally contracted for the Ensley Theatre, that was about $12,000. Those contracts were shown at the two theatres, although they were to show them at the one theatre. The distributors allowed that adjustment of the contracts to be made. The $18,000.00 of Steed's contracts were not taken over and were a total loss.

208 Q. Did the distributors ask for the time being that the Ensley Theatres put up security as a condition to making new contracts?

A. Yes; it was placed on the fraudulent transfer list, or FT list, just for a day or two at a time, and Wilbey would come over and assure us that he would get it all straightened out, and that he was going personally to see that his contract would be taken care of and they would lift these FT rulings and continue right on with the bookings—with the spot bookings—until it was personally approved by the credit committee, and they agreed. Mr. Wilbey is a pretty responsible man in that territory and operates a number of theatres. At the same time they knew this deal was very shady, but just on his assurance that he would see that the $12,000 worth of contracts were taken care of they thought it better to salvage those than to lose all of them.

Mr. Wilbey did not put up security at any time, and both theatres continued showing pictures during the period of this altercation.

Referring to pages 233, 234, and 235 of Government Exhibit 4, Tuscaloosa is approximately one hundred fifty (150) or one hundred sixty (160) miles from Atlanta. The exhibitor referred to on pages 234, and 235 was asked to put up security, but he did not

put any up. As far as I know, he did not get any pictures from our members, but he got service from E. & H. out of Birmingham. The reason he did not get any pictures was that he refused to put up his security. His theatre is operating now, having changed hands again. It is a theatre that changes hands occasionally. It has changed hands just once since that time over a year ago.

It was a plain, out and out, according to the idea of the credit committee, fraudulent transfer when this man Francis, who was operating the theatre, turned it over to Rush King, who was his machine operator or prejectionist. Of course they knew he had no money to operate the theatre with. The new man Rush King did not assume the contracts but repudiated all of them.

209 A total of eight (8) transfers during the year were marked FT; all but two (2) of these were cleared during the year, so at the end of the year only two (2) remained on the FT list.

The credit committee at its meetings in passing on the credit of a new owner tries to find out something about the financial standing of a new owner and his past experience in the theatre business and his character and general reputation, whether he is a man they want to entrust their films to, etc., whether he takes care of his obligations. In a great many cases the credit committee asks for a copy of the lease.

Q. Does the new owner sometimes have a lease, for, we will say a month or two, and ask for contracts for pictures for a period over a year?

A. A great many of these smaller theatres do; one of the questions is—the gist of it is—for how long does your lease run? If he says from month to month, a tenant-at-will lease——

Q. That has a bearing on making a contract for a year?

A. Oh, yes.

Q. Did the Atlanta board live up to the rules?

A. As far as I know, we tried to in every respect.

We have not had any of these side agreements that Mr. Douglas referred to. I attend all the meetings of the film board of trade and the various exchange managers attend those meetings.

Q. Are their relations with each other, so far as there are any relations, through the film board of trade?

A. Yes.

Q. Is there any understanding or agreement among the exchange managers and the members of the Atlanta Film Board of Trade to refuse to enter into any contract with any new owner of a motion-picture theatre to license the exhibition of any motion picture or motion pictures and to transport, supply, furnish, and/or deliver any motion-picture film or films to any such new owner, unless or

210 until said new owner has assumed and has agreed to perform each and every uncompleted contract for the exhibition of motion pictures in the motion-picture theatre acquired by him by purchase or transfer existing at the time of such purchase or transfer

between the former owner or operator of such theatre and any defendant distributor?

A. No.

Q. Has there been any such agreement while you have been there?

A. No.

Q. Would you know of it if there had been?

A. I would.

Q. Is there any agreement or understanding between the members of the Atlanta Film Board to retain on the credit information list the name of each and every motion-picture theatre acquired by a new owner by purchase or transfer unless or until such new owner has assumed and has agreed to perform each and every uncompleted contract for the exhibition of motion pictures in said theatre existing at the time of such purchase or transfer between the former owner or operator of such theatre and any defendant distributor and/or any other principal of any member of any defendant film board?

A. No, sir.

Q. Has there been any such during your term of office?

A. No, sir.

Q. Is there any agreement among the members of the Atlanta Film Board to refuse to spot book any motion-picture film or motion-picture films with any new owner of a motion-picture theatre prior to the report of the credit committee upon the credit standing of such new owner, unless such new owner deposits security for the performance of each such spot booking contract?

A. No.

Q. Has there been any such agreement?

A. No, sir.

Q. Is there any agreement between the members of the
211 Atlanta Film Board to require each new owner of a motion-picture theatre to deposit security for the performance of each and every contract for the exhibition of any motion picture or motion pictures at the theatre acquired by him by purchase or transfer, entered into by said new owner with any defendant distributor?

A. No; we follow the rules exactly. If it is listed FT, then he is required—if he is listed CIR, he is also required to post the security set opposite his name until such time as he furnishes the credit committee with the necessary credit information.

Anyone that is on the FT list can always accept pictures under the previous owner's contract without putting up any security. The same applies to anyone who is marked CIR; they can also spot book.

Q. I will ask you one more question: Is there any agreement or understanding between the members of the Atlanta Film Board to coerce and to require every exhibitor of motion pictures in the United States, acquiring a motion-picture theatre by purchase or transfer, to assume and to perform every uncompleted contract for the exhibition of motion pictures in such theatre existing at the time of such purchase or transfer between the former owner or operator of said theatre and any member of the Atlanta Film Board?

A. No, sir. I think my report here would substantiate that better than anything I could tell you. When the figures for the contract assumed are $154,000 and those not assumed amount to $450,000.

Q. You are referring to uncompleted contracts of previous owners?

A. That is right.

Q. So only twenty-five per cent was assumed in your territory?

A. Approximately that.

By the COURT:

Q. In dollars that is?

A. Yes, sir.

Q. Or outstanding rentals?

212. A. Rentals on the uncompleted portions of the contract.

By Mr. GROSVENOR:

Q. Is there any conspiracy or has there been any conspiracy between the members of the Atlanta Film Board of Trade to deprive every exhibitor of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer of the right to have any court having jurisdiction of the question settle and determine whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractual obligations?

A. No, sir.

Names of persons who have bought theatres come to us from different sources. A great many times an exhibitor will wire in stating he has taken over such and such a theatre, advise all exchanges. Sometimes the exchange will telephone me they have a letter or wire from an exhibitor. There are different ways of getting this information.

When I receive this information the name is placed on a credit information list under the heading "New sales reported." For a period of ten days or until such time as the credit committee has acted on the question the members are permitted to spot book to this new owner without any security or anything of that kind. During that period of investigation, which sometimes extends over ten days because our territory, like the Texas territory, is very big and sometimes it takes a letter two or three days to come from Miami or Key West to Atlanta. Therefore, in a great many instances, it takes longer than ten days to complete the investigation, but during that time the new owner is permitted to spot book. Immediately upon receipt of notice of this change of ownership list on the credit information list, as new sales reported, members send me what we call the member's statement. When I get all the member statements in, I take a questionnaire and fill out on the questionnaire the companies that have contracts with this old owner, the amount of unplayed pictures, and forward this questionnaire to the new

213 owner. He completes it, sends it back to me, and then it is turned over to the credit committee with such other informa-

tion as we have to determine just what his status should be. Along with the questionnaire I send a letter asking the new owner, if convenient, if he does not reside to far from Atlanta to come to Atlanta. The credit committee meets every Monday morning at 11.30. I tell the new owner that it would be better to come in and talk the situation over; that is, if he is near by. However, they rarely do that because the territory is so big.

The credit committee disposes of these cases as promptly as possible. During the spot booking period any new owner always can take pictures under any of the contracts of his predecessor. He can assume any one or all of those contracts without any security whatsoever. In our territory he can not only assume any one of the contracts but he can assume any portion of any one of the contracts that he wants to. For instance, if Universal has 40 features, 42 comedies, 42 news reels, he may say, I will take the features but I don't want the news and the comedies, and we will let him take the features, thus salvaging all that we can.

We never enter any security on the credit information list until the committee has made its report as to whether it is CIR or FT. It remains blank on the list without any symbol whatsoever until it has been passed on by the credit committee. If the credit committee reports it CIR or FT, then the security is posted opposite the name.

Q. In filling out the questionnaire, does your credit committee require the new owner to answer every question that is on the list; will they insist upon that?

A. No; that is every material question. "Do you have a matinée every Saturday," they do not care about that.

Cross-examination by Mr. THOMPSON:

We usually find from four to ten companies having outstanding contracts when a theatre is transferred. For the purpose of the credit committee work we consider one company's contracts as one contract, so there would be from four to ten to consider in a transfer.

214 Our credit committee is greatly interested in the financial standing of the new owners of theatres because that is where their revenue comes from. They take that into consideration in giving credit ratings, also the man's ability to take care of his obligations and his willingness to do so.

Q. Suppose they have a case to consider of a man who is known to be a dead-beat and to have no assets and to be a very poor credit risk, what action would the credit committee take in a case of that kind?

A. If the credit committee thought that a transfer to him—you see the rules are flexible to allow the credit committee to form an opinion. According to our understanding of these rules, it does not have to be absolutely beyond the peradventure of doubt that it

is a fraudulent transfer, the credit committee, if they are satisfied as is, then if it is a fraudulent transfer——

Q. No; assume they have no evidence that it is a fraudulent transfer and the man submits a bill of sale?

A. If they have no evidence that it is a fraudulent transfer in any respect, why then they always clear the situation.

Q. Irrespective of how poor his credit standing may be?

A. Yes, sir; because the rules do not permit of anything else.

Q. Under those circumstances, where he is a very poor credit risk and has a very poor credit standing and very poor reputation and everything, if they think there might be any collusion they would give him the FT rating; is that correct?

A. If they are satisfied from the investigation that they have made that the deal between him and the former owner was tainted with fraud or shady dealings, why, they would rate him FT.

Q. They could only do that in case there were some contracts that were not assumed under the rules; is that correct?

215 A. That would not have anything to do with it as to whether there were some or all. The company is obligated to furnish him service if he assumes the contract. It would only apply to those cases whose contracts he does not assume.

Q. I say, taking that case that I have assumed, if he does—that is, the new owner does assume all the outstanding contracts—the credit committee would have no right to place the deposit against him, would it?

A. No.

Q. If there were some contracts which were not assumed, when the credit committee considered the matter and they thought that was collusion they could give him the FT rating and place security; that would be in accordance with the rules, would it not?

A. Yes.

Q. Then if the next time he assumed the contracts that he had not assumed before the credit committee, they would be required under the rules to give him a favorable credit rating; is that correct?

A. That is right.

Q. So, as a matter of fact, the credit standing of a man really has nothing to do with this matter, has it?

A. Well, yes, it does; because he indicates by his willingness to take over these contracts that he is a man who would take care of his obligations.

Q. The case I assumed was one where he had a notorious reputation of being a dead-beat and not taking care of his obligations?

A. Under the rules they would be required to furnish him a service without a deposit.

I would not go so far as to say the credit committee would have to give the purchaser its approval, but the companies who had contracts would have to serve him because you see under the contract itself the company has no alternative. If the purchaser agrees to

216 take over the old owners contracts they have no alternative.

They must serve him under the terms of the contract itself, so that even though the credit committee feels that the purchaser is a bad moral or financial risk under the terms of the contract itself you see they are prohibited from making any rule that would restrain the company from continuing the service. As a matter of fact, he is just better than no risk at all. When a contract is assumed by the new owner, the old owner is not relieved from liability until the final completion of the contract.

I send out a credit information list and an explanatory bulletin that goes with it. The two together are all the information that is furnished our members, except if some booker or manager does not understand it when I try to make it very plain, and if he wants to get further information he calls me on the telephone and I tell him. We do not quote credit ratings to a man such as Dun or Bradstreet ratings. In the film business we do not need much of that, because when a man is in the business long everybody knows him and they know whether he is responsible or not.

By the COURT:

Q. Did you ever refuse to do business or do you know of distributors refusing to do business with any man who was in possession of a theatre, because of his financial irresponsibility, unless he has refused to assume somebody else's contracts?

A. No; I do not recall.

Q. What is that?

A. I do not recall any such instance; no, sir.

By Mr. THOMPSON:

Q. Can you tell me, Mr. Cole, what practical difference to the distributors it would make if none of the old contracts were assumed by new owners of theatres?

A. What practical difference it would make?

Q. Yes.

A. Well, competition is very keen with companies. We
217 will say, for instance, if Metro has a contract with a man, their salesman may not get there in time to get the contract with the new owner, and they lose out. There is that much loss, and besides it is expensive to send film salesmen into these little towns that change hands three or four or many times where you have to change your contracts all over again.

Q. A figure has been given of millions of dollars which has been referred to as a loss because contracts are not lived up to. In every case where a theatre is run it has to be served with pictures, does it not?

A. Yes, sir.

Q. And it is necessary to buy the same number of pictures, irrespective of whether it buys it from A, B, C companies or X, Y, Z companies; is that not true?

A. They require a certain number to run; yes. He may not buy it from the same company, and if he is not a prudent, careful buyer,

he may have bought in one instance more than the other fellow would buy.

I do not think that as a practical matter in the long run; it would work out in very much the same way if none of the old contracts were taken over by the new owners of theatres.

Q. Suppose a company had a contract with the old owner; another company got a new contract with the new owner; would not the same number of pictures be sold, and in the long run would not it work out the same way?

The COURT. That is not the whole question. You have an entire season's program to be considered—it is very obvious, of course, that that is an uneconomic way of conducting that business; it would be absurd and silly to do anything that way.

ROSE MARY FOLEY, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Grosvenor:

I reside at Omaha, Nebraska, and am secretary of the Omaha Film Board, which covers the entire State of Nebraska and the entire State of Iowa. In my report of January I reported 1,427 theatres in that territory. Our territory also covers a very 218 few counties in South Dakota. I do not know how many transfers of theatres there were in 1927. In 1928 there were 328. Only sixteen (16) of these were marked "FT." I think there were 140 of these where the previous contracts or part of the same were assumed. I think there were 32 who declined to assume any part of the previous contracts. There are many theatres in Iowa that change hands that are not served by our exchanges. These are only exchanges in Omaha.

There is a good deal of overlapping territory with other film boards. I only overlap with Des Moines and Minneapolis.

I have been secretary at Omaha since August, 1927. During that time I have been secretary of the credit committee and have attended all meetings of the credit committee. It meets once a week, every Monday. I am the employee of the credit committee whose duty it is to obtain the information as to credits regarding transfers in our territory. I collate this information, get it together for the committee, and submit it to them.

The credit committee in our territory asks for the bill of sale or lease from the new owner. If he will not submit it, then they try to get the bill of sale from the old owner or any agreement he might have with the new owner. If they refuse to submit that, they try to get them to appear before the credit committee. They do that very seldom in Omaha. We also send out our questionnaire asking that it be filled in, and we ask that the references on the questionnaire be filled in. Then we write these references questioning them regarding the new owner of the theatre. We tell anyone that is given as a reference that they have been referred to as a reference and that we

would like to know the moral and financial standing of this man and that any information given will be treated as confidential. I do not ask for the financial standing. I might have contradicted myself. We always ask for bank references on the questionnaire, and if the bank does not give a reference we ask for the financial standing. Our film board does not use that second sheet on the questionnaire.

The majority of these transfers are transfers from lessee to lessee. These transfers are almost always of small theatres. There have been only a very few large theatres changing hands since I
219 have been secretary. In the small towns it is almost always the case that the theatres are operated by men who conduct that as a side line—that is, by men otherwise engaged in other businesses. In large cities the exhibitor makes it his principal business. In the small towns somebody not connected with the film business frequently comes in on these transfers.

Under the rules in our territory members are permitted to adjust uncompleted contracts of the previous owner with the new owner and they do so. In our board the members are permitted to rewrite contracts even; if the exhibitor comes in and the distributor will sell him a new contract the old contract goes out and a new contract may be sold to him for the same number of pictures or a lesser number, with possibly a different rental and different pictures. We do not allow the members to sell more than they have under the contract with the old owner. I they had 50 features and 50 comedies, they could not sell to the new owner more that 50 features and 50 comedies. The amount of revenue does not enter into it.

If the man needs more pictures, he will have more than one contract to assume. I spoke of just one contract; no doubt there will be four or five contracts. If he assumes all the old contracts then the matter goes out of our hands if the new owner has submitted credit information and his credit is established. Many new owners are accepted as responsible who do not assume the contracts.

Q. Will you state some of the facts peculiar to the business which affect the losses of a distributor on the sale of a theatre that has any connection with placing or replacing a contract?

The COURT. I will assume that this business is the same fundamentally, unless there is something special in Omaha.

The WITNESS. I do not believe there is.

220 I was not in the film board before the credit committee rules were introduced, so I can not testify as to conditions before. One thing they mention that the rules accomplish is to make the exhibitor have more respect for his contracts. They also have taught the old owner of the theatre to see, in transferring his theatre, that the new owner takes over his contracts so that he will be relieved of them. They have taught the theatre owners, so that in the majority of the cases the old owner, that is the man selling his theatre, stipulated that the new owner shall complete the contract. I have not seen any hardship worked upon any exhibitor in our territory

by reason of anything in the credit rules. The exhibitors do not have any difficulty in obtaining pictures or contracts for pictures. If there had been such a condition, I would have been in position to observe it because every credit which is passed on comes to me. I am the one that knows it. I would be the only one who would know about it. The credit committee would not know about it without my knowing about it also, because I gather together the facts and present them to the credit committee. Some of the credit committee members get information from other people, but I would know that because they discuss it in the credit committee meetings. I know what the result would be. I know what the status of the exhibitor is before and after the transfer and before and after the action of the credit committee takes place. In 1928 we only reported 16 FT's out of 328 transfers. Some of these were from one member of a family to another. In such cases the members permitted the new ostensible owners to get pictures under a previous owners contracts without any security whatsoever.

The Miss Claire Foley referred to in the correspondence in Government Exhibit 18 was secretary of the board prior to my being secretary.

221 Page 432 is a questionnaire. On the bottom of page 432 I have enumerated the contract for the various distributors showing contracts with six different distributors aggregating many pictures. I imagine Grafton is about 200 miles from Omaha. We always, before we sent the questionnaire to the exhibitor, put on it that data enumerating the contracts with the various distributors. We get that information from the different exchanges after notice of the purchase comes into my office. Unless there was a change of ownership of the theatre there is no record of the outstanding contracts of exhibitors kept at my office.

I recall the circumstances of this transfer in Grafton. The person that was operating the theatre lost the lease through an act of the court and this party, L. E. Ritz, took the theatre over, and at first we did not know that the old owner had lost the lease and it was carried on our credit list for two weeks. No security was posted against the purchasers name. He did not assume any of the contracts, and as soon as we discovered the condition under which the theatre had been bought, that the old owner had lost his lease, we immediately took it from our credit list because we do that in our board. The new owner was then cleared even though he did not assume a dollar's worth of the previous contracts.

Page 440 is a personal letter I wrote to Mrs. Dietz, secretary of the Minneapolis board. Mrs. Dietz was a new secretary and so was I. We were comparing notes. We were writing about the rules to see is we understood them mutually the same way.

The letter of November 29 is to another secretary, Miss Matthews, of Des Moines.

222 Page 443 is a letter I wrote to Miss Matthews about a town that Des Moines had been carrying on their credit list for I

do not know how long; it had been quite a long time. When Miss Lytell had been in my board, she acted as the Des Moines secretary for some time; she told me she did not exactly know why the credit committee did not clear the account, and I wrote this letter to Miss Matthews after she became secretary. Miss Lytell really meant that this exhibitor was in bad standing with the distributor members of her credit committee, because he had theatres before and there were awards outstanding against him. It was not personal. That is the way the letter reads there. The men's credit has been impaired by reason of his failure to pay his debts but, however, the theatre had never really opened. It was just a report that came to us that this man was going to open a new theatre and he was put on the credit list. He was immediately taken off the credit list as soon as we found out that the theatre never had been opened. These small theatres in our territory often are closed for periods of months, depending on the weather and the crops. The next thing, skipping pages 444, 445, and 446, which are self-explanatory, the rest are just an enumeration of the plan for overlapping territories for establishing credit. I think we have that already. I have nothing to add to that. The next one is a letter to Miss Matthews, the Des Moines secretary, advising her of a contract outstanding at Omaha. It was just one contract, and as long as they had jurisdiction in establishing credit we asked them to take the contract into consideration. That matter is covered in this exhibit and the next two. No contracts were assumed. Credit was established. He was cleared although he assumed no contracts.

Our credit committee considers the assumption of contracts a material factor entering into the determination of the credit responsibility of the new owner. That is one of the principal
223 factors. Referring to page 450, second paragraph, Government exhibits, that is exactly what I said before to the extent of the old owners' contracts even though his credit has not been established. That means the credit committee has not yet passed in his case. That was done in this case, but they resold the new owner more service than they had under contract with the old owner. Page 451, I have no remarks to make on. Page 452 is another letter from Miss Matthews—that is, referring to the new owner in Claremont. He was cleared although he did not assume any contracts.

Page 453 is a service-report sheet that we used to use. I prepared it in my office from information obtained in order to have an accurate record and to have the information in good shape to present to the credit committee. We used to have this report to present in detail to the credit committee what investigation had been made. We use a similar form now which carried the same information. I do the best I can to get all the information I can obtain to submit to the credit committee, so that they can fairly pass upon the facts in good faith in each case.

By the COURT:

Q. Where is there any credit information on that?

A. It carries the number of pictures in the column called "Features" and "Comedies," and this is the amount of revenue represented by those contracts in the first column.

Q. Those are all obligations, are they not?

A. Yes, sir.

Q. No assets are shown there?

A. No; that is just the information that comes in regarding the contracts then in existence.

224 The factor which makes a new exhibitor good credit in the opinion of our credit committee is whether he will give all the credit information we ask for. An exhibitor may not have a great deal of money in the bank but he may become a very good exhibitor. He can operate his theatre and be able to pay his film rentals. If he has operated a theatre before and operated it successfully, that is, always paid his bills with the film company, but if it is a new owner and he has not ever operated a theatre before he does not necessarily have to assume the contracts, but if he comes in and seems to want to be fair and gives us the references we ask and all that——

Whether or not an exhibitor is going to observe his contractual obligations is what we are interested in; that is the thing we are looking into. Those are the questions that affect credit in the motion-picture business, not the amount of money in the bank, because contracts are made calling for a large number of pictures and these contracts are all made at the beginning of the year and the producing companies base their figures on the amount of money they are planing on those contracts as revenue. If that money does not come in from those contracts, they lose their money. It is very difficult to replace contracts.

225 MARCH 13, 1929, 10.30 A. M.

Mr. GROSVENOR.—Counsel have got together on the following stipulation:

Stipulational exhibits

Counsel stipulates that the exhibits introduced by counsel for the Government, taken from the files of the Dallas Film Board of Trade, Exhibit 8, the Atlanta Film Board of Trade, Exhibits 4 and 4–A, and Omaha Film Board of Trade, Exhibits 18 and 24, are typical of the other Government exhibits obtained from the eighteen film boards of trade, enumerated in the record at pages 9–14 as exhibits.

Counsel stipulate that the testimony of the secretaries of the Dallas Film Board of Trade, Atlanta Film Board of Trade, and Omaha Film board of Trade is typical of the testimony that would be given by each of the secretaries of the other twenty-nine film boards of trade if called and sworn to testify.

In view of the above stipulation, it is agreed that Government's Exhibits Nos. 1, 2, 3, 5, 6, 7, 7a, 9–17 and 19–23, record pages 19–24, meaning all the others that do not relate to those three film boards, are withdrawn and the defendants will not call as witnesses the secretaries of the other twenty-nine film boards of trade.

ROSE MARY FOLEY resumed.

Direct examination by Mr. GROSVENOR (continued)

Page 452 is a form of questionnaire which we no longer are using. Our Film Board is using the questionnaire, copy of which is attached to the petition.

Pages 453 to 463 are about a change of two theatres in Atlantic, Iowa, from a partnership to an individual. This individual had owned and operated 4 theatres before, as you will notice from looking at the questionnaire that he filled in and with all these theatres we had difficulty with his contracts. He did not have the respect
226 for his contracts that he should have had. He took over this theatre and claimed that the pictures that were in the theatre were entirely too high priced. The credit committee had reason to believe that there was some connection between the old owners and the new owners of the theatre, and he took the contracts in the Des Moines board—they were reassigned to him with adjustments, that is, the prices were reduced. The distributor reduced the price. That is also what happened eventually when the exhibitors got together with Vitagraph in Omaha, which was the only existing contract there, which he did not immediately adjust. Prices were reduced in every instance. He got pictures all this time during the controversy under contracts with Liberty, Metro-Goldwyn-Mayer, and United Artists. There were also contracts in the Des Moines board, but I do not know what those were.

Pages 499 to 519 are about a transfer of a theatre at Casey, Iowa. Mr. Wahe had owned and operated that theatre about a year and a half previously. He then sold the theatre to a man named Valentine and the contracts were not assumed. Then Mr. Wahe took the theatre back again and took a partner, a Mr. Skellinger. They transferred the theatre to a Mr. Monson. That all took place in about a year and a half's time. The questionnaire which Mr. Monson submitted to us did not give any information as to the length of his lease and we could not get that information. You will notice that he left a great many of the blanks vacant in that questionnaire on page 500. The questionnaire says that no contracts will be assumed. I could not get any information as to the length of his lease. There was one existing contract at Omaha, a Vitagraph contract for seven features, and the Vitagraph manager called upon Mr. Monson and said he would be willing to give him new pictures for the seven old ones if he would take care of the contract. Mr. Monson claimed that the contract had been signed by a Mr. Debolt, who was men-

tally incompetent. However, this was an untruth, because
227 the contract had been signed by Mr. Wahe and Mr. Skellinger and at no time was Mr. Monson without pictures. He was supplied with his pictures on his contracts from Des Moines, that he had assigned to him and which were adjusted. The majority of the contracts with this theatre were in Des Moines. He had quite a number of contracts. The theatre was operated all the time and finally was cleared. The other man I referred to a few minutes ago was finally cleared.

Page 520 refers to a transfer at Lytton, Iowa. In this case the new owner of the theatre, as you will note from page 522, agreed with the old owner to assume and complete all contracts. He sent that agreement in to us signed by himself. After he had sent that letter he said that he could not possibly play all those pictures, there were too many pictures under contract. The contracts were with ten different distributors. After Mr. Hull wrote to us I think we sent a copy of the letter to the Des Moines board, and we each prepared a list of the pictures under contract and allocated his contracts, that is, we cut them down so that he would not have too much service. We adjusted the contracts so that he would not have too much service. Mr. Hull did not pay anything for this adjustment he had agreed to assume and complete all the contracts, but we cut that down for him at his request. He was cleared after that.

At the end of the year 1928 all of the sixteen (16) FT cases had been cleared so that not one of those theatres were being requested to give security. I have refreshed my recollection for 1927. There were 689 theatres transferred in our territory. 65 were reported at one time or another in 1927 by the credit committee as FT transfers. At the end of the year all but three of these FT cases had been disposed of, that is, they had been cleared and were getting pictures without any security.

I have heard the testimony of Mr. Douglas and Mr. Cole about
228 the supplemental agreements, and my testimony is the same as their's. There are no such agreements in my territory. I have attended all the meetings of the film board for two years. All the dealings and all the relationships of the distributors and branch managers with each other are through the film board. There is no conspiracy to coerce the purchasers of theatres to assume uncompleted outstanding contracts and there has not been during the two years I have been in Des Moines.

Cross-examination by Mr. THOMPSON:

Q. Miss Foley, what I do not understand is just how the fraudulent transfer in the course of time becomes a nonfraudulent transfer.

A. Well, if we have reason to suspect that the new owner, for instance, has some connection with the old owner, and after a period of time if we receive information that would lead us to believe otherwise then it becomes a nonfraudulent transfer.

Q. In the meantime the man has been listed as FT by mistake.

A. It is not a mistake so far as I know. We are doing what we think is the correct thing at the time.

Q. I take it from what you have said that there have been a number of cases where a man has erroneously been carried as FT?

A. Yes, sir.

Q. Your opinion is that all of these that you have marked as "FT" have been cleared before the end of the year. Is that quite accurate? Do you not really mean that they have just been dropped from the credit information list?

A. In some instances probably the theatre did not open. I did not say they had all been cleared and were operating the theatres.

If a man goes out of business and ceases to operate, he is eliminated from the credit information list.

Q. You, in other words, do not show how many were actually cleared or just dropped?

A. No; I could not say that.

229 We use the form letter that is submitted in the statement to send an exhibitor his credit committee questionnaire. I do not believe that that contains notice that he has the right to spot book until he is cleared by the credit committee. I do not believe that information is contained in the letter to the exhibitor, but the exhibitor is usually informed of that.

In our territory we urge the salesmen whose companies have contracts in the territory to call on the exhibitor who has taken over the theatre. The majority of the boards do not do that. Not a majority of them, but some of them do not do that, but we urge them to, if they can, to call on that exhibitor and adjust the contracts the way they want to do. That gives the company holding the contract an opportunity to sell the contract. That is the practice with our board. As a convenience to the exhibitor the salesmen of the companies having contracts are urged to call upon the exhibitor for the purpose of securing some adjustment because in the Omaha district they do not very often come into Omaha.

THERESE E. DRAZIN who was recalled as a witness on behalf of the defendants testified as follows:

Direct examination by Mr. GROSVENOR:

This statement was prepared under my direction at my office from the reports which I have testified were sent in by the secretaries and was personally checked by me. (Statement introduced in evidence and marked "Defendant's Exhibit D.")

There is a difference in the way the totals for 1927 were made as compared with the totals for 1928 in the last column on this statement—"cases reported as fraudulent transfers." We called for the information in a somewhat different manner last year than we

230 called for it this year. The figures for 1927 show the first report made by the credit committee, if it was an FT symbol, whereas the 1928 figures show the ultimate report—that is, a theatre

might at first have been reported but cleared later in the year, so that if there is a zero it means he was finally cleared of the FT rating. Exhibit A, which has already been put in evidence, shows for 1928 the total FT cases that were first reported FT cases during 1928.

Cross-examination by Mr. THOMPSON:

Q. I do not quite understand the last question and the last answer. Just what do those 1928 figures show?

A. Do you mean in the last column?

Q. Yes.

A. Here.

Q. Yes. "Cases reported as fraudulent transfers." You said that for 1928——

A. We called for the information in this way: In most cases reported unfavorably that meant first reported, the first time that the credit committee met and made any report at all.

Q. Yes.

A. Then we had a subdivision calling for the information subsequently reported favorably.

Q. Yes.

A. Therefore an FT that was at no time during the year reported favorably after the first report remained an FT rating at the time of this report, December 31, 1928. Is that clear?

Q. So that this report shows the number that were not ultimately cleared, but does not show the number that might at first have been given an FT rating.

231 Mr. GROSVENOR. For 1928.

A. (Continuing.) In 1928; yes. The figures in the last column show those that were not ultimately cleared of an FT rating at the time of this report.

By the COURT:

Q. That is with reference to 1928?

A. Yes.

Q. 1927 shows all that were first reported FT.

Mr. THOMPSON. Yes.

A. We had no information as to the ultimate figures. We did not call for it that way.

By Mr. GROSVENOR:

Q. In 1927?

A. Yes; in 1927.

By Mr. THOMPSON:

Q. Is the same explanation correct for the cases in which credit information was refused?

A. Yes.

Q. Or if he was carried for a while as CIR and then he sent in the information, then he was cleared, so he shows as favorably reported?

A. On the 1928.
Q. On the 1928?
A. But not on the 1927.
Mr. GROSVENOR. Defendant closes.
Mr. THOMPSON. Government rests.
[Testimony closed.]

231½ Sir: You will please take notice that an order, of which the within is a copy, was this day duly entered in the within-entitled action, in the office of the clerk of the District Court, S. D., N. Y.

Dated, N. Y., March 19, 1930.

Yours, etc.,

CHARLES U. TUTTLE,
U. S. Attorney.

To CADWALADER, WICKERSHAM & TAFT.

Copy received this 19th day of March 1930.

CADWALADER, WICKERSHAM & TAFT,
Sol. for 1st Natl.

232 *Government Exhibit 4*

ATLANTA FILM BOARD, CREDIT COMMITTEE, VOL. I

233 Exb. 266

NOVEMBER 14, 1927.

Mr. RUSH KING,
2728 8th St., Tuscaloosa, Ala.

DEAR SIR: On the 11th we sent a questionnaire to Mr. E. T. King, Ritz Theatre, Tuscaloosa, Ala., to be filled out in connection with the transfer of the old Star Theatre, now called the Ritz.

For fear that you have not received this blank, we are enclosing another herewith. and would thank you to complete same and return to us promptly, in order that the credit committee may have the proper information upon which to record this transfer, and that you may establish a credit standing with them as a new owner.

Please let us have the return of this blank promptly, as it is very necessary that we have this information.

Yours very truly,

EXECUTIVE SECRETARY.

From F. B., 8-16-28.
HHR.

234 Exb. 267

TUSCALOOSA, ALA., *Nov. 16.*

FILM BOOKING OFFICES OF AMERICA,
Atlanta, Ga.

DEAR SIR: Your letter of the 14 received, but there must some misunderstanding on your part. This theatre is not in the hands of Mr. Francis, nor anyone that is related in any way to him. It will

be bought by me if I can make it pay. It is leased to me now. I trust we can get together on a good program in the near future.

Hoping there is no hard feelings, I remain,

Yours truly,

(Signed RUSH KING.

P. S.—This theatre is also under new name.

235 Exb. 268

KING'S KLEAN KLEANING,
529 Twenty-fifth Ave.,
Tuscaloosa, Ala., Nov. 17/27.

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

DEAR SIR: I am very very sorry that I have not mailed the questionnaire back to you. But Mr. Francis failed to see a lawyer about drawing up a lease until this morning (17). So to-night I am mailing both the lease and the questionnaire to you. I certainly hope that I have done this the way you wanted it done. Hoping that I have not caused you any trouble, I remain,

Yours for a quick reply,

E. T. KING.

From F. B., 8–16–28
HHR.

236 Exb. 273

Nov. 18, 1927.

RUSH KING,
2728 8th St., Tuscaloosa, Ala.

DEAR SIR: We have your letter of the 16th and in reply will say that whenever a theatre changes hands it is necessary for it to be cleared by the credit committee of the Atlanta Film Board of Trade before new contracts can be taken by any of the Atlanta film exchanges.

It is my understanding that the secretary of the Atlanta Film Board of Trade has already mailed you a questionnaire to be filled out and signed and returned to him, and upon receipt of this questionnaire the credit committee will take up the matter of clearing the change of ownership, and as soon as the house is cleared by the credit committee then each of the film exchanges will be in position to negotiate with you for film service.

In view of the above, I would urge that, if you have not already done so, that you promptly fill out and mail Mr. Cole the questionnaire which he sent to you.

Yours very truly,

F. B. O. PICTURES CORP.,
Branch Manager.

C. c. to Mr. Cole.
C. c. to Mr. Bryan.

237 Exb. 300

KING'S KLEAN KLEANERS,
529 Twenty-Fifth Ave., Tuscaloosa, Ala., Nov. 18, 1927

UNIVERSAL FILM CO.,
Atlanta Ga.

DEAR SIR: Several days ago I signed a contract with your company. Since then I have not heard one word. This is very very strange to me. To-day is the 18; to-morrow is my opening day and for my Monday's program I have heard nothing. Please let me have some paper special delivery. Also give me a good print as I want to have as near perfect projection as possible. Thanking you for your past kindness and I hope I'll hear from you by return mail or wire, I, remain,

Yours truly,

E. T. KING.

P. S.—Please address all mail to Ritz Theatre, 7th St., Tuscaloosa, Rush King or E. T. King.

From Universal, 8–11–28.
HHR.

238 Exb. 301

NOVEMBER 18, 1927.

MR. E. T. KING,
Ritz Theatre, Tuscaloosa, Ala.

DEAR MR. KING: If you have not already forwarded in to the credit committee of the film board of trade the application for credit mailed you, please do so immediately. Until your credit has been established we are only supplying you with service for next week. Service for next week will be as follows:

Nov. 21st, Silent Rider— Hoot Gibson; 23rd, Mins Home on the Cliff; 23rd, Haunted Homestead; 23rd, Fishing Snookums. Advertising as ordered on these four subjects to be forwarded to you immediately.

Just as soon as your credit has been established by credit committee of film board of trade, we shall be very glad to arrange service for week of Nov. 28th and further.

Yours truly,

R. B. GANN, *Booker.*

"Book now for Universal Joy Week, December 25th to 31st, inclusive."

From Universal, 8–11–28.
HHR.

239 Exb. 304

NOVEMBER 22, 1927.

RUSH KING,
Ritz Theatre, Tuscaloosa, Ala.

DEAR SIR: In reply to your letter of Nov. 19th, desire to state that we will not be in a position to supply you with any service after this week until you have established your credit rating with the film board of trade.

Yours truly,

E. L. O'NEILL, *Booker.*

G:G.

Book now for Universal Joy Week December 25th to 31st, inclusive.

From Universal, 8–11–28.
HHR.

240 Exb. 274

NOVEMBER 22, 1927.

Mr. J. M. FRANCIS,
Star Theatre, Tuscaloosa, Ala.

DEAR SIR: We are informed that you have disposed of your theatre to Mr. E. T. King, but that you have not made any arrangements with him for the completion of the contracts you had on the house.

When an exhibitor disposes of his theatre without making arrangements with the new owner for the assumption of the contracts, he is still liable for the completion of the contracts himself. We would, therefore, suggest that you take this matter up with Mr. King and see if you cannot arrange this matter satisfactorily, as unless this is done you will not be relieved of your liability under the contracts.

This would appear to apply specifically in your case, as we note that you own the building and that you are leasing the theatre and equipment to Mr. King.

Please let us hear from you promptly in regard to the matter.

Yours very truly,

EXECUTIVE SECRETARY.

From F. B., 8–16–28.
HHR.

241 Exb. 275

NOVEMBER 22, 1927.

Mr. E. T. KING,
Ritz Theatre, Tuscaloosa, Ala.

DEAR SIR: We have yours of the 17th enclosing questionnaire and copy of lease which was turned over to the credit committee on yesterday, and they have asked that I send you another blank and ask that you complete and have same witnessed before a notary public.

They would also like to know why you do not desire to complete the contracts of the old owner, Mr. Francis. Inasmuch as Mr. Francis owns the building and is leasing it to you, together with the equipment, it would appear that the proper thing to do would be to go ahead with his contracts. And, too, in case you refuse to complete the contracts made by Mr. Francis, he will still be under obligations for the contracts which he signed and will not be relieved of them by your taking over the house.

We are today writing Mr. Francis in regard to this matter.

Please let us have the return of this blank, properly witnessed, promptly, and in the meantime you can continue to spot book pictures from the different companies until the matter is definitely settled.

Yours very truly,

EXECUTIVE SECRETARY.

From F. B., 8-16-28.
HHR.

242 Exb. 276

KING'S KLEAN KLEANING,
529 Twenty-Fifth Ave.,
Tuscaloosa, Ala., 11/23/27.

E. L. COLE,
Atlanta Film Board of Trade, Atlanta, Ga.

DEAR SIR: We have your letter of the 22nd. Would like to state the reason we can not complete the contracts of Mr. Frances. First, he paid to much for his films for this class of show; and the shows he showed did not take with the negro's here, and that is one reason he had to close his show. The negro's want action for their money. Mr. Frances assured us that we would not have to assume any of his contracts. I was talking with Mr. Frances this a. m., and he fully understands that if he opens up another show he will have to play his old contracts. Would appreciate it very much if you would tell the Universal people that they may spot book us, as they do not seem to understand that they may do this. We are having the questionnaire properly signed by witness.

Please let us know just as soon as possible if we are to get a clearence from from the film board of trade, for the license inspector is after us for our licence, and we are holding him off untill unt'll we know if we get a clearence or not, for we do not want to spend any more money till we know about our clearence. We have signed contracts with Pathe, Universal, and Bromberg. They are spot bookings us till we get a clearence. We sincerely hope that we have explained every to the film board of trade satisfactory. Mr. Frances does not own the building; Rosenaur Bros. own the building; Mr. Frances has a five-year lease on the building, and we are subleasing from him. Hopeing to hear from you as soon as pos'ible in regards to our clearence.

Yours very truly,

(Signed) E. T. KING.

243 Exb. 277

TUSCALOOSA, ALA.,
Nov. 25, 1927.

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

Mr. E. L. COLE, *Sectiy.*

DEAR Mr. COLE: Yours of the 22nd regarding my incompleted contracts of Star Theatre. The reason that I closed my house was because I could not make it pay with the pictures and prices I had contracted for. It stands to reason that another man cannot do the impossible. I gave the house a fair trial to the tune of about $2,500.00 which came out of my pocket. In the first place the film companies would not give me first-run pictures altho mine was the only exclusive colored house here. I had to play behind the Wilby house, which does not depend on the colored trade for their expenses. I had asked and received a cut from the several companies, but it didn't pull me thru. I had to charge 15¢ admission and play second behind a house that charges 10¢. As to owning the building, I don't. If you compell Mr. King to play out my contracts he will close. You will thereby lose what contracts he has made. Believe me I am not trying to dictate to or getting hard boiled with you. That's not my way. I put every penny I had and borrowed some besides into the house and had to close. Mr. King thinks that he can make it go with new contracts. Mary be he can. But he can't with the old ones. I sincerely hope that this can be settled to the satisfaction of all concerned. The building is owne' by the Rosenau Bros. of this city. The contracts of mine might be played out at a $7.50 top but not over that.

Yours truly,

(Signed) J. M. FRANCIS.

244 Exb. 279

KING'S KLEAN KLEANING,
529 Twenty-fifth Ave., Tuscaloosa, Ala., 11/29/27.

Mr. E. L. COLE,
Executive Secretary,
Atlanta Film Board of Trade, Atlanta, Ga.

DEAR SIR: We would appreciate it very much if you would please let us know by return mail if we are to get a clearence or not from the Atlanta Film Board of Trade, for we do not want to spend any more money on this show if we are not to get a *a* clearence, and we will close down on next Saturday the 3rd. We have been treated very bad by the film companys we had signed up with. They promised us they would spot book us till we got a clearence, and now they have all cut us out with out a minuites notice. Mr. Francis told us that we would not be held to his contracts. If we had known any thing about this we never would have leased the show from him.

The pictures he was playing did not take with the negro's, and that is why we had to close down.

Hoping to hear from you by return mail so we will know what to do by next Saturday.

Thanking you in advance,

(Signed) E. T. KING, *Dunbar Theatre.*

245 Exb. 280

DECEMBER 1, 1927.

Mr. E. T. KING,
Ritz Theatre, Tuscaloosa, Ala.

DEAR SIR: I have yours of the 29th, and wish to advise that the credit committee did not approve the transfer of the theatre to you, and would suggest that you come to Atlanta and meet with them at their meeting on Monday morning.

This will be much better and will enable you to get everything before them and possibly clear up the situation.

Yours very truly,

EXECUTIVE SECRETARY.

From F. B., 8–16–28.
HHR.

246 Exb. 281

KING'S KLEAN KLEANING,
529 Twenty-fifth Ave., Tuscaloosa, Ala., Dec. 23, '27.

Mr. E. L. COLE,
% Atlanta Film Board.

DEAR MR. COLE: To-morrow I am closing my house and am going to open up a theatre for white people instead of a colored theatre; this is the same one as Mr. Francis had but is leased to me; is there any chance to get pictures out of Atlanta? Please let me hear from you by return mail.

Very truly yours,

RUSH KING, *1842 23 Ave.*

From F. B., 8–16–28.
HHR.

247 Exb. 282

JANUARY 4, 1928.

Mr. RUSH KING,
Ritz Theatre, Tuscaloosa, Ala.

DEAR SIR: In view of certain facts and circumstances which have come to our knowledge in connection with the acquisition by you of the Ritz Theatre (formerly the Star Theatre), we have recommended to our members that before entering into any contracts with you for the exhibition of pictures at your theatre they should require from you a deposit of the sum of $500.00 as security for the performance of any such contracts.

If you desire to make any statement which you believe will satisfy the committee that its recommendation should be withdrawn, we will be glad to hear written statement together with the information which we have heretofore requested from you will be given careful consideration.

Yours very truly,

CREDIT COMMITTEE, ATLANTA FILM BOARD OF TRADE,
Secretary.

From F. B., 8–16–28.
HHR.

248 Exb. 283

KING'S KLEAN KLEANING,
529 Twenty-fifth Ave., Tuscaloosa, Ala., 2/12/28.

Mr. E. L. COLE,
Atlanta Film Board of Trade, Atlanta, Ga.

DEAR SIR: I would appreciate it very much if you would advise me by return mail what film exchange put me before the film board for not playing Mr. J. M. Frances contracts out after I had leased the theatre from him. I had to close the theatre down on account of not getting a clearence from the film board. I thought may be if I knew who it was that put me before the board I might compl*i*mise in some way with them, and get a release from the film board and open the theatre up again.

Thanking you in advance for the favor.

Yours truly,

E. T. KING, *529 25 Ave.*

From F. B., 8–16–28.
HHR.

Exb. 284

FEBURARY 15, 1928.

Mr. E. T. KING,
529 25th Ave., Tuscaloosa, Ala.

DEAR SIR: We have yours of the 12th, and wish to advise that you are under a wrong impression regarding the operation of the Star or Ritz Theatre at Tuscaloosa. No particular company put you before the film board, as you state, but the credit committee was not satisfied as to the legitimacy of the transfer upon the information submitted them.

We feel sure that if you will come to Atlanta and appear before the credit committee, which meets every Monday morning at 11.30 o'clock, that you can get your matters straightened out. We suggest that you do this.

Yours very truly,

EXECUTIVE SECRETARY.

From F. B., 8–16–28.
HHR.

250 Exb. 285

KING'S KLEAN KLEANING,
529 Twenty-Fifth Ave., Tuscaloosa, Ala., 2/16/28.

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

DEAR SIRS: Your letter of recent date in regards to the Brookhart bill received, and contents carefully noted. I want to say to you that I am in favor of this bill being passed for the small exhibitors' benifit, for under the film board's control the little fellow hasn't a chance. I know this from experience with the Atlanta Film Board of Trade. I leased the Star Theatre from Mr. J. M. Frances and went to a big expense, and had signed contracts with film exchanges in Atlanta, Ga., and because I could not play Mr. Frances' contracts out, after I had written and explained that the class of pictures he was showing did not meet with the approval of the negroes here and that Mr. Frances had to close the show on that account. Then the film board had me cut out from any pictures I had contracted for. I did not have a minute's notice, and on account of this I had three days dark house, until I could get lined up with E. & H. Film Co., of Bham, Ala. And when I had run every thing they had I was forced to close down. And now I will have to pay rent on the theatre till my lease expires. I have a uncle here who was a law partener for years with the congr'ssman from this district, and I will get him to use his influence with his friend, and get him to do all he can to get the Brookhart bill passed, so the little exhibitor will have a chance, for they have none now.

Yours truly,

(Signed) E. T. KING.

From F. B., 8–16–28
HHR.

251 Exb. 286

FEBRUARY 17, 1928.

Mr. E. T. KING,
529 25th Ave., Tuscaloosa, Ala.

DEAR SIR: We have yours of the 16th, and note what you have to say relative to the Brookhart bill now pending in Congress, and can only say that if the bill passes we feel sure that when you have actually seen the effects of it you will change your mind.

Now as to the transfer of the Star Theatre to you. We feel that you are just as much to blame as the film board for the position in which this theatre is placed. You certainly would not expect to walk into a large department store, for instance, and secure credit for a large bill of goods without their making some investigation of you, if you had never done business with them before.

The railroad fare to Atlanta and return from your city is not over $10.00, hardly that much we think, and if you would come

over here, or had come when the theatre first was taken over by you and gone into the matter fully with our credit committee, we feel sure that you would have had no difficulty in securing the proper kind of arrangements for service. If you have gone to the outlay of expense that you state, it would certainly appear that you would be willing to spend a few dollars to get everything straightened out.

The film board has no desire whatever to work any hardship on you, or any other exhibitor, but our members are certainly entitled to enough*t* information to convince them that it is to their advantage to do business with you.

Yours very truly,

EXECUTIVE SECRETARY.

From F. B., 8–16–28.
HHR.

252 Exb. 298

CREDIT COMMITTEE BULLETIN

APRIL 23, 1928.

Confidential to members

To all members:

This bulletin is being sent you explanatory of Credit Information List No. 105, dated April 23, 1928.

No change of ownership

Mrs. D. C. Stringfellow has not disposed of the Royal Theatre at Samson, Ala. Therefore, this name is dropped from the list and you will continue to serve the old owner.

House closed

Dr. R. N. Jackson reports to the secretary that the Jaxon Theatre at Brunswick, Ga., is closed indefinitely, and this name is therefore dropped from the list until such time as the house reopens.

Sales approved by the credit committee

Lincoln Theatre, Bradenton, Fla. New owner, W. B. Russell. Has assumed contract of F. B. O.

Empire Theatre, Empire, Ala. New owner, E. R. Ware. Has assumed contracts of F. B. O. and Warner Bros.

Lynn Haven Theatre, Lynn Haven, Fla. New owner, O. F. Barron. Has assumed contracts of Bromberg, Educational, Fox, and Liberty.

Venice-Nokomis Theatre, Nokomis, Fla. New owner, W. R. Fleck. Has assumed contracts of Fox and Pathe.

Trojan Theatre, Troy, Ala. New owner, W. D. Patrick. Has assumed contracts of Bromberg, Eltabran, F. B. O., Liberty, M–G–M, and Tiffany.

Star (or Ritz) (now called the Dunbar Theatre), Tuscaloosa, Ala. New owner, E. T. King. No contracts have been assumed.

Sales investigated and not approved

The Capitol Theatre, Tallahassee, Fla., and the Amusu Theatre, Villa Rica, Ga., have failed to return questionnaire and have been placed on the CIR list.

E. L. COLE, *Executive Secretary.*

For the benefit of those serving a few towns in South Carolina, wish to advise that the secretary has not as yet had a report from the Charlotte board on the change of ownership at Bamberg, S. C., or Andrews, N. C.

From F. B., 8–16–28.
HHR.

253 *Government Exhibit 4A*

ATLANTA FILM BOARD CREDIT COMMITTEE, VOL. II

255 JANUARY 7, 1928.

MANAGER, ENSLEY THEATRE,
Ensley, Ala.

DEAR SIR: We have been informed that you are arranging for the transfer of your Ensley Theatre, at Ensley, Ala. If this information is correct, will you kindly let us have the name of the new owner and the date on which this transfer becomes effective?

You realize, of course, that in accordance with clause thirteen of the standard exhibition contract you may be held responsible for the full cash value of any pictures unplayed on existing contracts at the time this transfer becomes effective and, if you have not already done so, we would suggest that you arrange with the new owner to assume in writing any and all uncompleted contracts for film service with the Ensley Theatre. If you have made it a condition of the sale of your theatre that film contracts are to be assumed by the purchaser, the committee will appreciate your advice to that effect.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
———, *Secretary.*

From F. B., 8–16–28.
HHR.

256 JANUARY 7, 1928.

COUNTY RECORDER,
Ensley, Ala.

DEAR SIR: We have been informed that Mr. Joe Steed has sold the Franklin Theatre at Ensley and that Mr. R. B. Wilby has sold the Ensley Theatre at Ensley, Ala.

Before making a report to our membership on these sales, this committee would like to know whether or not these transactions have been recorded and, if so, the names of the former and present owners. If the theatres are to be operated by a partnership or by a corporation, we should like to have the names of the partners or officers of the corporation, also the date on which the sales become effective.

Your prompt attention to this matter will be appreciated, and we are enclosing a stamped, addressed envelope for your convenience in replying.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
———— ————, *Secretary.*

From F. B., 8-16-28.
HHR.

257 JANUARY 7, 1928.

Mr. JOE STEED,
Franklin Theatre, Ensley, Ala.

DEAR SIR: We have been informed that you are arranging for the transfer of your Franklin Theatre at Ensley, Ala. If this information is correct, will you kindly let us have the name of the new owner and the date on which this transfer becomes effective?

You realize, of course, that in accordance with clause thirteen of the standard exhibition contract you may be held responsible for the full cash value of any pictures unplayed on existing contracts at the time this transfer becomes effective, and, if you have not already done so, we would suggest that you arrange with the new owner to assume in writing any and all uncompleted contracts for film service with the Franklin Theatre. If you have made it a condition of the sale of your theatre that film contracts are to be assumed by the purchaser, the committee will appreciate your advice to that effect.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
———— ————, *Secretary.*

From F. B., 8-16-28.
HHR.

258 Jan. 9, 1928.

Joe Steed, President. J. W. Andrews, Manager.

JOE STEED AMUSEMENTS, INC.

OFFICE, 511 NINETEENTH STREET, ENSLEY, ALA.,
January 7th, 1928.

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

GENTLEMEN: I beg to advise you that I have sold out the Franklin Theatre, in Ensley, to the Ensley Theatres, Incorporated, Mr. R. B. Wilby, president of the company, and the Franklin will be operated by Mr. Wilby's interest.

Yours very truly,

(Signed) JOE STEED.

From F. B., 8–16–28.
HHR.

259 ROBERT B. WILBY

Tudor Theatre Building

ATLANTA, GEORGIA, *Jan. 11, 1928.*

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

GENTLEMEN: Exchanges in Atlanta have refused to book or sell pictures to us at Ensley until such a time as a question'aire regarding the sale of theatres there to Ensley Theatres, Inc., has been filled out.

I personally, Beacham and Prince, have all requested your mailing such question'aire. None has been received. This sort of thing makes it very difficult for us to operate our business, and if continued longer will result in definite losses to us.

It would be interesting to know just why this information should be made necessary to the conduct of our business on the one hand and the means for supplying it held up on the other.

Very truly yours,

(Signed) R. B. WILBY.

December 10th, 1928.
From F. B., 8–16–28.
HHR.

260 JANUARY 10, 1928.

ENSLEY THEATRES, INC.,
% Mr. R. B. Wilby,
Tudor Theatre Bldg., Atlanta, Ga.

GENTLEMEN: The sale or transfer to you of the Franklin Theatre at Ensley, Ala., and the Ensley Theatre, Ensley, Ala., has been

reported to the credit committee of this film board of trade. The committee is charged with the duty of making a report upon your financial standing and general business reputation for the confidential information of the members. Therefore the enclosed questionnaires are sent you to answer and sign to enable the committee to obtain from you credit information which it deems necessary so that a fair and accurate report may be made. Sign and complete a questionnaire for each theatre.

Please note the names of the distributors, the dates of their existing contracts, and the number of pictures unplayed and undated contracted for to be shown at such theatre, as reported by such distributors to the credit committee. If you have agreed to assume such existing uncompleted contracts, please so indicate by filling out and signing the blank on the third page of the questionnaires. Otherwise, please advise the credit committee which of such contracts you desire to have continued so as to save the time necessarily required to negotiate for other pictures, thus enabling you to continue the operation of the theatre uninterrupted.

Be sure also to answer in detail each of the other questions, giving as many bank and other references as you believe will enable the credit committee to reach a proper conclusion respecting your credit standing.

As you know, commercial credit is an estimate of the ability and disposition of individuals, firms, or corporations to meet their business obligations, based chiefly upon reputation and character, capital in business, net worth, and such other facts bearing upon the probability of success or failure in business. Therefore, you will appreciate the necessity of giving careful attention to and promptly answering this letter.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
———— ————, *Secretary.*

From F. B., 8–16–28.
HHR.

261 ROBERT B. WILBY

TUDOR THEATRE BUILDING,
Atlanta, Georgia, Jan. 11, 1928.

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

GENTLEMEN: As the quickest means of getting the information contained to the various film exchanges concerned, I am sending you statements of Ensley Theatres, Inc., to which statements I ask that you attach this letter that it may be considered a part of the statements by the various exchanges interested.

Ensley Theatres, Inc., did not obligate itself to assume the liabilities nor did it acquire the assets of the Joe Steed Amusement Company, Inc., and R. B. Wilby and R. M. Kennedy, a partnership, other

than those outlined in the certain bills of sale from these parties to it. Both of these parties are fully responsible for whatever obligations they may have incurred.

R. B. Wilby and R. M. Kennedy fully expect to be held responsible for all the liabilities assumed by them in connection with their operation of the Ensley Theatre, including contracts for films. I admit their liability for whatever differences may exist between contracts entered into by Ensley Theatres, Inc., and them. Ensley Theatres, Inc., has not, however, agreed to assume these or other liabilities and will strongly protest against any possible effort to force upon it an obligation to which it has not agreed.

For your information the Joe Steed Amusement Co., Inc., and R. B. Wilby and R. M. Kennedy own certain nonnegotiable notes of Ensley Theatres, Inc., which are, and must remain for some time, subject to attachment in connection with any judgement which any creditor of either of them may secure. Thus it would seem that the ability to pay or neither party has been materially lessened through the sale of its theatre to Ensley Theatres, Inc.

Very truly yours,

(Signed) R. B. WILBY.

JANUARY 11TH, 1928.
From F. B., 8–16–28.
HHR.

262 Letter dated Jan. 11 is part of this reply.

Please answer each question, sign, and return to credit committee, Atlanta Film Board of Trade, address 215 One-O-One Bldg., Atlanta, Ga.

1. Name of theatre, Ensley Theatre.
2. Street address_____ City and State, Ensley, Ala.
Population of city, part of Bham. Seating capacity, 780.
√Policy: Pictures (√) vaudeville; ( ); road shows ( ).
Number of days open each week, 6. Time of first performance, 10 a. m., 11 p. m.
What days do you have matinees_____. Time of first performance_____. Subject to change.
Telephone No. of office_____; of residence_____
Name of person, firm, or corporation operating theatre, Ensley Theatres, Inc.
If a corporation give corporate name_____
Name of president, R. B. Wilby.
Name of treasurer, Joe Steed.
Name of secretary, Joe Steed.
Name of general manager, R. M. Kennedy.
Is stock of corporation or a substantial amount thereof owned or held by another corporation? No. If so, give name of corporation and names of officers and directors_____
If partnership, give names of partners_____
Who is authorized to enter into and sign contracts, R. B. Wilby.

3. How will the contracts be signed? Ensley Theatres, by president.
4. Is theatre owned or leased? Leased. If leased, state expiration date of lease_____
5. Name of lessor, _____. If owned, state name of owner. Ramsey & McCormack, Inc.
6. On what date was theatre taken over? 1/9/28.
7. Place where and date of recording bill of sale. Not recorded.
8. Admission prices, 10–25.
9. Condition of projection machines. Good.
10. Have you or your operator inspected them; if not, do you agree to have them inspected within thirty days. Yes.
11. Model of machines. Simplex. Year, 1926.
12. Name theatres heretofore conducted, stating location of each. None by this company. Officers known in this territory for 15 years.

263 13. If you have never been engaged in the exhibition of pictures, state previous business_____

14. Bank references, Bank of Ensley.
15. Other references, Any film exchange.
16. Specify contracts for film service made by previous owner:

Name of distributor	Date of contract	No. pictures unplayed
Enterprise Film Corp.	4–26–27	52 features, 25 2-reels.
Paramount	June, Aug., & Sept., 1927	25 features, 35 2-reels; 40 1-reels; and 64 issue news.
Metro-Goldwyn	June & July, 1927	58 features; 39 2-reel subjects.
Pathe	6–27–27	61 features.
Liberty		81 features, 1 serial, & 2 episodes of another.
Universal	June & Oct., 1927	26 1-reel comedies; 91 features; 158 2-reel subjects; 47 1-reels.
Tiffany	May & Sept., 1927	38 features.

17. Specify contracts you have assumed, none. See attached note.
18. If you have not assumed the previous owner's contracts, will you assume them?_____
(If your answer to this question is "yes," fill out and sign the attached agreement of assumption.)

The undersigned represents and warrants that the answers to the foregoing questions are true and are made to induce the members of the above-named Film Board of Trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at the above-named theatre.

(Signature) ENSLEY THEATRES, INC.
By R. B. WILBY.

Dated 1/11, 1928.
From F. B., 8–16–28.
HHR.

264 ASSUMPTION OF CONTRACTS

_____ _____ 19____

Know all men by these presents that the undersigned _____ owner / lessee } of the _____ Theatre, in consideration of one dollar lawful money of the United States in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations hereby agrees to assume, carry out, and fully perform each of the contracts now existing between _____ and the following distributors: _____
(Name of previous owner)

_____

_____

for the exh bition of pictures at said theatre from the above date.

Distributors	Date of contract	No. pictures unplayed	Class (features, comedies, news, other shorts)

_____
(New lessee. New owner)
(strike out one)
_____ Theatre.
Address _____

265 STATEMENT OF FINANCIAL CONDITION

Statement of _____

Individual. Corporation. Partnership (strike out one)

Operating _____ Theatre

To credit committee of the film board of trade:

For the purpose of inducing the members of the film board of trade to contract with the undersigned owner (or lessee) for the exhibition of motion pictures at the _____ Theatre, I (or we) warrant and represent that the following is a true and correct statement of my (or our) financial condition on the _____ day of _____ 19 ____, and agree that in case any change occurs that materially reduces my (or our) ability to pay all claims and demands against me (or us) or materially increases my (or our) liabilities or decreases my (or our) assets, I (or we) will forthwith notify you in writing to such effect.

Assets		Liabilities	
Cash on hand, and in bank	$1,000	Notes payable	$50,000
Notes receivable		Money borrowed	
Real estate (how valued)		Accounts payable	
Furniture and fixtures	60,000	Mortgages, real estate	
Screen, machines, chairs		Chattel trusts	
All other assets consisting of:		Mortgages on personalty and fixtures	
		All other liabilities consisting of:	
Total	70,000	Total	50,000
		Net worth as of this date	$11,000

ENSLEY THEATRES, INC. (*Exhibitor*).
By R. B. WILBY.

266 Letter dated 1/11/28 is a part of this reply. Please answer each question, sign, and return to—

CREDIT COMMITTEE

ATLANTA FILM BOARD OF TRADE

Address, 215 ONE-O-ONE BLDG.,
Atlanta, Ga., Jan. 11, 1928.

1. Name of theatre, Franklin Theatre.
2. Street address, _____; city and State, Ensley, Ala.
   Population of city, part of Birmingham; seating capacity, 700.
V Policy: Pictures ( ); vaudeville ( ); road shows ( ).
   Number of days open each week, 6; time of first performance, 10 a. m., 11 p. m. Subject to change.
   What days do you have matinees, _____; time of first performance, _____.
   Telephone No. of office, _____; of residence, _____.
   Name of person, firm, or corporation operating theatre, Ensley Theatres, Inc.
   If a corporation give corporate name _____
   Name of president, R. B. Wilby.
   Name of treasurer, Goe Steed.
   Name of secretary, Goe Steed.
   Name of general manager, R. M. Kennedy.
   Is stock of corporation or a substantial amount thereof owned or held by another corporation? No. If so, give name of corporation and names of officers and directors_____
   _____
   If partnership, give names of partners _____
   Who is authorized to enter into and sign contracts, R. B. Wilby.
3. How will the contracts be signed, Ensley Theatres, Inc., by president.
4. Is theatre owned or leased, building leased. If leased, state expiration date of lease. (No answer.)
5. Name of lessor, Ramsey & McCormack. If owned, state name of owner
   _____
6. On what date was theatre taken over, 1/9/28.
7. Place where and date of recording bill of sale, not recorded.
8. Admission prices, 10–25.
9. Condition of projection machines, new.
10. Have you or your operator inspected them; if not, do you agree to have them inspected within thirty days, yes.
11. Model of machines, powers; year, _____.
12. Name theatres heretofore conducted, stating location of each. This company has conducted no theatres. Officers of company are known in this territory.
13. If you have never been engaged in the exhibition of pictures, state previous business. X.
14. Bank references, Bank of Ensley.
15. Other references, Atlanta Film Board of Trade.
16. Specify contracts for film service made by previous owner:

Name of distributor	Date of contract	Number of pictures unplayed
Eltabran Film Co	Oct. 14, 1927	12 features.
Educational	June 26, May 27, June 28	89 2-reel; 81 1-reel.
Paramount	May 21, 1927	33 features.
F. B. O	June 26 and July, 1927	74 features; 72 2-reel comedies.
Fox	June and December, 1926, and October, 1927.	93 features; 22 2-reel; 26 news; and 26 varieties.
Bromberg Att	July 16, 1926	52 features; 2 serials; 35 2-reel.
Pathe	June, 1926, and January, 1927	80 features; 1 serial; 66 2-reel. Standing order even and odd news, fables, and reviews.
Liberty		7 features.
First National	1926–1927	79 features and specials.
Universal		102 odd-issue and 102 even-issue news.
Warner Bros	October, 1925, June, 1926, and July, 1927.	58 features.

17. Specify contracts you have assumed. None.
18. If you have not assumed the previous owner's contracts, will you assume them? No.

(If your answer to this question is "yes," fill out and sign the attached agreement of assumption.)

The undersigned represents and warrants that the answers to the foregoing questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at the above-named theatre.

(Signature) ENSLEY THEATRES, INC.
By R. B. WILBY,
Owner, President, Lessee (strike out one).

Dated 1/11, 1928.
From F. B., 8–16–28.
HHR.

ASSUMPTION OF CONTRACTS

----------, 19----

Know all men by these presents that the undersigned ---------- ---------- owner, lessee, of the ---------- Theatre, in consideration of one dollar lawful money of the United States in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations, hereby agrees to assume, carry out, and fully perform each of the contracts now existing between ---------- and the following distributors: (Name of previous owner)

---

for the exhibition of pictures at said theatre from the above date.

Distributors	Date of contract	Number of pictures unplayed	Class (features, comedies, news, other shorts)

(New lessee. New owner.) (Strike out one)
---------- Theatre.
Address ----------

From F. B., 8–16–28.
HHR.

Letter dated 1/11/28 is a part of this reply.

STATEMENT OF FINANCIAL CONDITION

Statement of Ensley Theatres, Inc.

Individual. Corporation. Partnership (strike out one)

Operating Franklin Theatre

To Credit committee of the film board of trade:

For the purpose of inducing the members of the film board of trade to contract with the undersigned owner (or lessee) for the exhibition of motion

pictures at the _____ Theatre, I (or we) warrant and represent that the following is a true and correct statement of my (or our) financial condition on the 9 day of Jan., 1928, and agree that in case any change occurs that materially reduces my (or our) ability to pay all claims and demands against me (or us) or materially increases my (or our) liabilities or decreases my (or our) assets, I (or we) will forthwith notify you in writing to such effect.

Assets		Liabilities	
Cash on hand and in bank	$1,000.00	Notes payable	$50,000.00
Notes receivable		Money borrowed	
Real estate (how valued)		Accounts payable	
Furniture and fixtures	60,000.00	Mortgages—real estate	
Screen, machines, chairs		Chattel trusts	
All other assets consisting of:		Mortgages on personalty and fixtures	
		All other liabilities consisting of:	
Total	61,000.00	Total	50,000.00
		Net worth as of this date	$11,000.00

From F. B., 8–16–28.
HHR.

ENSLEY THEATRES, INC. (*exhibitor*),
By R. B. WILBY.

270 JANUARY 16, 1928.

ENSLEY THEATRES, INC.,
% Mr. R. B. Wilby, Tudor Theatre Bldg.,
Atlanta, Ga.

GENTLEMEN: In view of certain facts and circumstances which have come to our knowledge in connection with the acquisition by you of the Franklin Theatre, Ensley, Ala., and the Ensley Theatre, Ensley, Ala., we have recommended to our members that before entering into any contracts with you for the exhibition of pictures at your theatres in Ensley they should require from you a deposit of the sum of $500.00 for each of these theatres as security for the performance of any such contracts.

If you desire to make any statement which you believe will satisfy the committee that its recommendations should be withdrawn, we will be glad to hear you in person, or a written statement together with the information which we have heretofore requested from you will be given careful consideration.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
———— ————, *Secretary.*

From F. B., 8–16–28.
HHR.

271

JANUARY 17TH, 1928.

Mr. R. B. WILBY,
Ensley Theatres, Inc., Ensley, Alabama.

In re Ensley Theatre, Ensley, Alabama

DEAR MR. WILBY: Because of your failure to supply the credit committee with the necessary information to establish a credit rating, it becomes necessary to ask that you place with us a deposit in the amount of $500.00, to guarantee the fulfillment of the contracts we hold with the Ensley Theatre, Ensley, Alabama.

Kindly let this deposit come forward by return mail.

Yours very truly,

LIBERTY-SPECIALTY FILM DIST. CORP.
H. P. RHODES, *Asst. Mgr.*

hpr/a.
From Liberty, 8–13–28.
HHR.

272 ROBERT B. WILBY, TUDOR THEATRE BUILDING, ATLANTA, GEORGIA

LIBERTY SPECIALTY FILM CO.,
Atlanta, Ga.

GENTLEMEN: I have your letter of January 17th, regarding a deposit of $500 on contracts with me for Ensley, Ala.

Please be advised that the contracts between us provide for the posting of a deposit only in the event of my refusal to submit a difference between us to arbitration or to carry out the findings of an arbitration committee. I have done neither of these things, and must refuse to accede to the request for this deposit.

I call your attention to the agreement by you that any difference under the contract will be submitted by either of us to arbitration. This is such a difference.

Please be advised that I have a contract for pictures in the Ensley Theatre for which I am responsible. Failure to ship pictures as sold and booked under that contract will be followed by my effort to collect the considerable damages which will result.

Yours very truly,

R. B. WILBY.

January 18th, 1928.
From Liberty, 8–13–28.
HHR.

273

JANUARY 17, 1928.

MR. R. B. WILBY,
Tudor Theater Building, Atlanta, Georgia.

DEAR MR. WILBY: For failing to establish sufficient credit rating with the credit committee of film board of trade, we must ask that

you post with us a deposit in the amount of $500.00 to partially protect us on contracts we hold against the Franklin Theater, Ensley, Alabama.

You will please see this is forwarded to arrive in our office within seven days.

Sincerely yours,

FOX FILM CORPORATION,
———, ———, *Branch Manager.*

PCB/W
From Fox, 8–16–28.
HHR.

274

275 ROBERT B. WILBY, TUDOR THEATRE BUILDING, ATLANTA, GEORGIA

WARNER BROTHERS,
163 Walton Street, Atlanta, Ga.

GENTLEMEN: I acknowledge receipt of your letter of January 17th asking that I post a deposit of $500.00 with you to guarantee in part the fulfillment of contracts which you hold with the Franklin Theatre, Ensley.

I have no contract on films for the Franklin Theatre, Ensley, and can not make any deposit to guarantee some contract which you may have with some one else.

Very truly yours,

R. B. WILBY.

January 18th, 1928.
From Warner, 8–16–28.
HHR.

276 JANUARY 18, 1928.

Registered mail

ENSLEY THEATRE,
Ensley, Ala.

GENTLEMEN: In accordance with the revisions of our contract, it now becomes necessary that you furnish us with a deposit in the amount of $500.00 to protect our contract and to insure proper handling of our film while in your service.

Unless this deposit is received within seven days from the date of this letter, it will be necessary that we temporarily suspend service.

Yours very truly,

TIFFANY-STAHL PRODUCTIONS, INC.
W. G. MINDER, *Branch Mgr.*

WGM/H
From Tiffany, 8–7–28.
HHR.

277 ROBERT B. WILBY, TUDOR THEATRE BUILDING, ATLANTA, GEORGIA

TIFFANY-STAHL PRODUCTIONS,
Atlanta, Ga.

GENTLEMEN: I acknowledge receipt of your letter dated January 18th asking that I deposit with you $500 to protect your contract with me for the Ensley Theatre, Ensley, "in accordance with your contract."

I fail to find any provision in that contract for such a demand, and I hereby refuse to make such a deposit.

I hereby advise you that any failure to ship films as contracted will result in considerable loss, for which you will be held responsible. I further advise you that your contract provides that any difference between us must under the contract, be submitted to a board of arbitration. This being such a difference I demand that it be submitted to such a committee.

Very truly yours,

R. B. WILBY.

January 18th, 1928.
From Tiffany, 8–7–28.
HHR.

278

JANUARY 18, 1928.

FRANKLIN, THEATRE,
Ensley, Ala.

GENTLEMEN: Owing to the fact that you have not furnished the credit committee of the Atlanta Film Board of Trade with information necessary to clear the transfer of your theatre, it is necessary that we request a doposit of $500 before we can serve your theatre.

Very truly,

A. C. BROMBERG ATTRACTIONS,
——— ———, *Booker.*

From Bromberg, 8–8–28.
HHR.

279

JAN. 17, 1928.

ENSLEY THEATRES, INC.,
Franklin Theatre, Ensley, Ala.

GENTLEMEN: Inasmuch as you have not established a credit rating with the Atlanta Film Board of Trade, it will be necessary for us to temporarily suspend service unless you forward us by return mail certified check or money order in the amount of $500.00 to guarantee protection of our prints while in your possession.

Yours very truly,

FBO PICTURES CORPORATION,
——— ———, *Assistant Manager.*

DOG/p.
From F. B. O., 8–8–28.
HHR.

280 JANUARY 19, 1928.

ENSLEY THEATRES, INC.,
Franklin Theatre, Ensley, Ala

GENTLEMEN: This will withdraw our deposit letter of a couple of days ago and we are reinstating all bookings in accordance with dates given us by Mr. Andrews.

Yours very truly,

FBO PICTURES CORPORATION,
——— ———, *Assistant Manager.*

DOG/p.
From F. B. O., 8–8–28.
HHR.

281 JANUARY 17, 1928.

Mr. R. B. WILBY,
Tudor Theatre Bldg., Atlanta, Ga.

DEAR MR. WILBY: Inasmuch as you have failed to establish your credit rating with the credit committee of the joint film board of trade, we feel that it is necessary for us to require a $500.00 deposit to guarantee the fulfillment of our contract at Franklin Theatre, Ensley, Ala., and another $500.00 deposit at Ensley Theatre, Ensley, Ala., making a total of $1,000.00.

Of course, if you could establish your credit rating with the credit committee then we would gladly withdraw our claim for this deposit; otherwise we deem it advisable to suspend service after to-day.

Yours very truly,

BEN Y. CAMMACK,
Branch Manager.

BYC:G.
From Universal, 8–11–28.
HHR.

283 JAN. 17, 1928.

Registered return receipt requested

ENSLEY THEATRES, INC.,
Ensley, Alabama.

GENTLEMEN: In view of the fact that you have not furnished the Atlanta Film Board of Trade credit committee with the information necessary to intelligently pass upon the transfer of the Ensley Theatre to you, it will be necessary that we ask you for a deposit of $500.00 to guarantee the fulfillment of your contract with us.

We would suggest that you immediately furnish the film board of trade the information requested so that this matter can be finally settled.

Yours very truly,

METRO-GOLDWYN-MAYER DIST. CORP. OF W. VA.
——— ———, *Branch Manager.*

LD: MJ.

From M. G. M., 8–14–28.
HHR.

284 ROBERT B. WILBY

TUDOR THEATRE BUILDING,
Atlanta, Georgia, Jan. 19, 1928.

CREDIT COMMITTEE, ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

GENTLEMEN: We note that you have found certain facts in connection with the purchase by us of the Ensley and Franklin Theatres, Ensley, Ala., which, in your opinion, justifies your recommending to your members the demand of a deposit of $500 upon any contract signed by us.

You state that you will be glad to have me discuss this matter further with you. I would like to do that.

I would also like for you to advise me on these points:

1. Would the assumption by this use of the contract with the Joe Steed Amusement Company, Inc., and with R. B. Wilby cause the waiver of this demand of deposit?

2. Would the agreement by R. B. Wilby personally to guarantee the contracts which this company may make for, say, the next one year establish the credit of this company until it is more firmly established?

Very truly yours,

ENSLEY THEATRES, INC.,
By R. B. WILBY, *President.*

January 28th, 1928.
From F. B., 8–16–28.
HHR.

285 ROBERT B. WILBY

TUDOR THEATRE BUILDING,
Atlanta, Georgia, Jan. 19, 1928.

ATLANTA FILM BOARD OF TRADE,
Atlanta, Ga.

GENTLEMEN: Differences exist between me and certain companies namely Paramount-Famous-Lasky, Metro-Goldwyn Mayer, Tiffany, and Universal, regarding the right of these companies to demand

deposits on contracts between them and me and to suspend or cancel the contract until such deposits have been made.

Under the terms of the respective contracts I have agreed to submit to an arbitration committee any question arising under the contract.

Please be advised that I desire such a committee to pass upon the rights of these companies to demand these deposits, to suspend service if such deposit is not forthcoming, and to determine the extent of the damage done in the event such shipments are suspended and our theatre closed as a result.

Very truly yours,

R. B. WILBY.

January 18th, 1928.
From F. B., 8–16–28.
HHR.

286 JANUARY 18, 1928.

ENSLEY THEATERS, INC.,
c/o Mr. R. B. Wilby, Tudor Theatre Bldg., Atlanta, Ga.

GENTLEMEN: I am instructed by the credit committee to advise you that after carefully reviewing the transfers of the Ensley Theatre, Ensley, Ala., and the Franklin Theatre, Ensley, Ala., they are unable to change the decision previously made by them.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
——— ———, *Secretary.*

From F. B., 8–16–28.
HHR.

287 JANUARY 19, 1928.

Mr. C. C. PETTIJOHN,
General Counsel, Film Boards of Trade,
469 Fifth Avenue, New York City.

DEAR MR. PETTIJOHN: Referring to our telephone conversation this morning in reference to the action of the credit committee in not approving the transfer of the Ensley Theatre, Ensley, Ala., and the Franklin Theatre, Ensley, Ala., which theatres have been taken over by the Ensley Theatres, Inc., operated by Mr. R. B. Wilby and associates. As requested by you, I have instructed all of the companies to allow their present bookings to stand and discontinue no service to these theatres until your office can come to a decision as to these transfers. We have taken the matter up with Mr. Wilby and he has agreed to present his side of the matter to you in writing, but states that he will not agree to abide by your findings.

I am going into this matter at some length, in order that you may fully understand the position that our credit committee has taken in this matter.

Mr. Joe Steed formerly operated the Franklin Theatre at Ensley, Ala. Mr. Steed operates three or four other theatres in and around Birmingham. Mr. Steed has uncompleted contracts with our members amounting to $18,588.50.

Mr. R. B. Wilby and Mr. R. M. Kennedy formerly operated the Ensley Theatre at Ensley, Ala. Mr. Wilby and various associates operates a large number of theatres in North Carolina, Georgia, and Alabama. The Ensley Theatre has contracts uncompleted with our members amounting to $12,010.75.

Mr. Wilby, Mr. Kennedy, and Mr. Steed formed a corporation known as the Ensley Theatres, Inc. Questionnaires were sent to Mr. Wilby on behalf of the Ensley Theatres, Inc., on which questionnaires were listed the uncompleted contracts of both theatres. Mr. Wilby filled out these questionnaires and returned them to us, and on both of the questionnaires stated that the Ensley Theatres, Inc., would not assume the contracts of the former owners.

Representatives of our members have talked with Mr. Joe Steed in Birmingham, and he has stated to them that he, Mr. Wilby
288 and Mr. Kennedy have simply consolidated the two theatres under one management and that all contracts of both houses will be carried out and fully completed. Mr. Wilby, however, who we understand is at the head of the Ensley Theatres, Inc., states that they will not assume the contracts.

The credit committee went into the matter very thoroughly, discussed it from every angle, and reached the conclusion that this transfer was made for the purpose of avoiding existing contracts, and made their decision accordingly.

The Ensley Theatres, Inc., were asked for a deposit before further service could be furnished, and Mr. Wilby upon receiving these notices asked that the case be reopened and that he be allowed to appear before the credit committee in person. This was done, he appearing before them yesterday afternoon from 4 o'clock until 6 o'clock. The matter was thoroughly discussed with him and after his departure the credit committee affirmed the original findings.

Mr. Wilby's contention is that he has not refused to play out his own contracts, but that he does refuse to have the Ensley Theatres, Inc., play out Joe Steed's contracts. When he was told that he had refused to have the Ensley Theatres, Inc., assume his own contracts for the Ensley Theatre, and that as this was the case he had no theatre to play them in, he stated that he was responsible for his contracts personally and that if he saw fit to have them played in the Ensley Theatres that was his own affair.

What he wants the credit committee to do is to relieve the Ensley Theatres, Inc., of the contracts of both houses, allow him to play the pictures contracted for the Ensley Theatre in either of the houses he chooses, and then proceed personally against Joe Steed for his uncompleted contracts in the Franklin Theatre, which procedure would, of course, have to be against Steed's other houses.

The credit committee can not see where there is any change of ownership. Mr. Wilby, Mr. Kennedy, and Mr. Steed, who were the owners of the two houses formerly, now between them hold all of the stock in the Ensley Theatres, Inc.

Our committee feels that as both of these houses were losing money, or at least not making any money, the owners of them conceived the idea of forming a corporation, talking over the two houses and getting themselves out of a bad situation and making our members "the goat." They can not feel that there is any difference between the way they have handled the matter in forming
289 the new corporation and taking over the houses, with the same owners holding all the stock, then, if they had simply consolidated the two houses and gone into a partnership, in which event, there would have been no question as to their liability.

We would thank you to review this matter carefully after you have received the written statement from Mr. Wilby, and then advise us whether we should maintain the same position we now hold.

The credit committee has not withdrawn their findings in the matter, but are simply holding them in abeyance and permitting the bookings on these houses to stand.

Yours very truly,

CREDIT COMMITTEE.
ATLANTA FILM BOARD OF TRADE,
———— ————, *Secretary.*

It is the opinion of the credit committee in reaching the above conclusion that were they to recognize transfers of this sort as being strictly legitimate, they would place themselves in such a position that any one could form a corporation at a cost of $50 or $100, and thereby cancel all of the contracts with all film companies, with the idea of making new contracts at less money, and there would be no means of protection for the film companies other than resort to the courts. Certainly if this can be done in Ensley it could be done anywhere.

From F. B., 8–16–28.
HHB.

290 JANUARY 24, 1928.

Mr. ROBERT B. WILBY,
Tudor Theatre Building, Atlanta, Ga.

Copy to E. L. Cole, secy. Atlanta Film Bd.

DEAR MR. WILBY:

This is to acknowledge the receipt of your letter of January 19, 1928, to Mr. Pettijohn concerning the situation at Ensley, Ala.

Because of the claims made by you, it is clear to me you have misconceived the functions of the credit committee of the Atlanta Film

Board of Trade. Neither such committee, nor the members of the board, are attempting to force the Ensley Theatres, Inc., to assume the uncompleted contracts made by you or your partners, Mr. Kennedy, or those made by Mr. Steed. On the contrary, they have simply pointed out to you that, as provided in the credit committee rules, if the corporation does not assume all of such contracts the credit committee will then be required to make an unfavorable report upon the credit standing of the corporation because of the facts learned by the committee in respect to the transfer of the theatres to the corporation.

It seems to me that the transaction, as you have outlined it, by which the theatres were transferred to the corporation, can not be viewed otherwise than one which was made for the purpose of avoiding the existing contracts of Mr. Steed and of the partnership of Wilby and Kennedy, and that the credit committee is justified as provided in its rules in reporting that as a condition for the making of contracts with the corporation security should be deposited to insure that performance.

Such a report does not relieve you or your partner, or Mr. Steed, from the respective obligations under the uncompleted contracts, for which contracts it seems clear there is a liability for damages for breach thereof because of the transfer of the theatres to the corporation, making it impossible to perform such contracts by the signers thereof.

Yours very truly,

GABRIEL L. HESS,
General Attorney.

HD.
From F. B., 8–16–28
HHR.

291 JANUARY 26, 1928.

MR. GABRIEL L. HESS,
General Attorney, Film Boards of Trade,
469 Fifth Avenue, New York City.

DEAR MR. HESS: I have yours of the 24th, from which I note that you approve of the action taken by our credit committee in the matter of the transfer of the two theatres in Ensley, Ala., to the Ensley Theatres, Inc.

As advised in my previous letter, we had advised our members to allow the bookings to stand until we heard from you. It now develops that Mr. Wilby has left Atlanta to be gone for several days and that he will go to New York before he returns. The matter has been fully discussed to-day, and we have decided that we will not again ask for the deposit until he returns to the city, as we do not want him to be able to say that we took advantage of his absence when no one in authority could place the deposits and suspended his service. We will, therefore, allow the bookings to stand until his return.

Just before Mr. Wilby left the city he called upon each exchange interested for a list of the pictures under contract with both theatres, together with the prices. It is the writer's personal opinion that he is going direct to the home offices to try to secure the concessions he desires. Therefore, if consistent, we would appreciate it if you would advise the various general sales managers of the action taken by our credit committee, in the hope that they will do nothing that might cause embarrassment to their local managers.

Yours very truly,

——— ———, *Executive Secretary.*

From F. B., 8–16–28.
HHR.

292

FILM BOARDS OF TRADE,
469 Fifth Avenue, New York, Jan. 26, 1928.

CHARLES C. PETTIJOHN,
General Counsel.

GABRIEL L. HESS,
General Attorney.

JANUARY 24, 1928.

Mr. E. L. COLE,
Secy. Atlanta Film Board of Trade, Atlanta, Ga.

DEAR MR. COLE: After carefully considering the facts stated in your letter of January 19, 1928, and in the letter of Mr. Robert B. Wilby, bearing the same date, both addressed to Mr. Pettijohn, it seems to me that the transfer of the respective theatres of Mr. Steed and of Messrs. Wilby and Kennedy to the Ensley Theatres, Inc., all of the stock of which is owned by these three persons, was one made for the purpose of avoiding the uncompleted contracts for the exhibition of pictures at such theatres. Accordingly, I believe the report of the credit committee fixing the amount of security which the Ensley Theatres, Inc., should be required to deposit for the performance of any contract it desires to enter into was fully justified. Neither the credit committee nor the members of your board can require the Ensley Theatres, Inc., to assume and carry out the uncompleted contracts of either Mr. Steed or of Messrs. Wilby and Kennedy. As to such contracts each of your members holding them can proceed against the respective exhibitors parties thereto to secure awards for damages for a breach thereof, because by the transfer of their theatres to the corporation these exhibitors have made it impossible to carry out and perform their contracts.

For your information enclosed is a copy of my letter to Mr. Wilby sent in response to his letter to Mr. Pettijohn.

Sincerely yours,

(Signed) GABRIEL L. HESS,
General Attorney.

HD.
Encl.
From F. B., 8–16–28.
HHR.

293 WESTERN UNION

JAN. 28, 1928, 10.38.

Received at NA370 75 NL—New York, N. Y., 27.

E. L. COLE,

Atlanta Film Board of Trade, 215 Marietta Bldg., Atlanta Ga.

Have telegram from Wilby advising he will be in New York early part of next week. He says his office advised him that letter from Hess agreed entirely with Atlanta board and gave no details [stop]. I read Hess letter. He does give details and does not agree entirely with Alanta board's position [stop]. Suggest you have Wilby's office tell him truth about this communication and hold matter until I talk with Wilby here in New York.

C. C. PETTIJOHN.

From F. B., 8–16–28.
HHR.

294 FILM BOARDS OF TRADE,
469 Fifth Avenue, New York, Feb. 4, 1928.

Charles C. Pettijohn, General Counsel; Gabriel L. Hess, General Attorney

FEBRUARY 1, 1928.

Mr. E. L. COLE,
Atlanta Film Board of Trade,
Atlanta, Georgia.

DEAR COLE: Bob Wilby was here to-day and I have just finished a long talk with him. Of course I have nothing else to do at the present time, with the Brookhart bill in Washington and the contract committee in Chicago, but I suppose I ought to do everything and tell the Atlanta board how to straighten out this particular situation. Some day you boys will be able to straighten out some of these things yourselves without bothering this office, but I guess you have not arrived at this point yet. Maybe I better come down and play a little "golf" with "you all."

Now let us use some simple language and make a common-sense analysis of the situation. The Ensley Theatre Corporation was organized to take over and operate theatres formerly held by the Steed Amusement Company, R. B. Wilby and R. M. Kennedy. The Steed Amusement Company is a corporation, has not been dissolved, and I understand now operates three other theatres.

Your board is dealing with the Ensley Theatre Corporation. I understand that they, by arrangement with Steed and Wilby, will play certain of the pictures that were placed under contract by Wilby and Steed prior to the existence of the organization of Ensley Theatre Corporation. The pictures that the new corporation does not want to take over and play present a different problem.

It is my understanding, and if I am wrong I would like to be corrected, that Steed and his company and Wilby are financially

responsible for the contracts that the Ensley Theatre Corpora-
295 tion does not want to play by arrangement with Wilby and Steed. If this is the case, why don't the members of your board, who have contracts with Steed and Wilby, lay all their cards on the table, call in Steed and Wilby, and in the presence of each other, without any other outside advice, decide first, what the legal rights of both parties are and, second, what is the fair and right thing to do.

It strikes me that the important thing is to keep the theatres running with reasonably current pictures, without sacrificing anything material for the distributing companies or relieving either Wilby or Steed from any fair legal obligation.

My further understanding is that there are two theatres involved with about 800 feature pictures under contract. I am satisfied that there is no conspiracy beween Wilby and Steed in this matter, and I think that is something you boys have overlooked. Suppose Wilby was to say to you what you evidently want him to say, that he will start in with these two theatres, playing all of these more than 800 pictures, and two or three years from now he will still be playing old pictures he now has under contract, which many of you will be unable to serve because you will not have the prints in service. Wilby can not give you more play dates than he has to give. The result would probably be the destruction of these theatres' business and the loss of what otherwise would have been two good customers in the form of two successful theatres.

I can not for the life of me understand how you can improve the motion-picture business by closing up theatres or by compelling theatres to play pictures that are two, three, or four years old.

This is rather a lengthy letter, but please tell the Atlanta Film Board of Trade for me that in my humble opinion the men who will be handling distribution in the motion-picture business two years from now will be the branch managers who have had some vision of what to ex[illegible] in the future and who have been sensible enough to avoid these petty controversies which destroy theatres and theatre business and which produce nothing in the long run except heartaches, headaches, and "sabotage" in the form of unnecessary propaganda against the industry.

This fellow Wilby impresses me as being a pretty square shooter and a reasonable man. I do not know anything about Steed, but I believe you folks can sit around a table, cards face up, and if
296 necessary bring in Steed and Wilby and settle this controversy without adding to the coal oil fires which are now going on in the industry.

Sincerely yours,

C. C. PETTIJOHN,
General Counsel.

Try it anyhow between them and the company managers now having contracts. Let each company make its own adjustment—but not a "in common"—deal.

C. C. P.

From F. B., 8–16–28.
HHR.

297 WESTERN UNION

ATLANTA, GA., *February 11th, 1928.*

GABRIEL L. HESS,
Film Boards of Trade, 469 Fifth Avenue, New York City.

Please refer your letter January twenty-fourth and Mister Pettijohn's letter February first relative transfer of Ensley, Alabama, theatres to Wilby. Confer with Mister Pettijohn and let us have your instructions by wire early Monday morning [stop]. This wire sent on instructions of credit committee.

E. L. COLE.

Paid and charge.
Atlanta Film Board of Trade, 215—101 Bldg.
From F. B., 8–16–28.

298 WESTERN UNION

The filing time as shown in the date line on full-rate telegrams and day letters and the time of receipt at destination as shown on all messages is standard time.

MAR. 1, 1928.

Received at the Journal Bldg., 7 N. Forsyth St., Atlanta. Always open.
NB 176 35–KE. New York, N. Y., 1 1010A. 1 a. m., 9, 25.

E. L. COLE,
Secretary Atlanta Film Board of Trade,
215–101 Marietta Bldg., Atlanta, Ga.

Upon return to New York reported to Hess my conference with Wilby and after complete review of all facts he is of same opinion expressed in his letter to you under date of January twenty-fourth.

A. S. DICKINSON.

From F. B., 8–16–28.

299 MARCH 1, 1928.

Mr. GABRIEL L. HESS,
General Attorney, Film Boards of Trade, 469 Fifth Ave., New York City.

DEAR MR. HESS: I am just in receipt of a wire from Mr. Dickinson reading as follows:

"Upon return to New York reported to Hess my conference with Wilby and after complete review of all facts he is of same opinion expressed in his letter to you under date of January twenty-fourth."

Inasmuch as Mr. Wilby claims that your letter of the twenty-fourth can be interpreted in two ways, the credit committee has asked that I write you and ask that you write us a letter setting forth the position of film boards of trade, so that we may furnish a copy of it to Mr. Wilby. They would especially like to have your letter by Monday, March 5th, at which time the credit committee meets.

Mr. Dickinson has no doubt told you of the action that Mr. Wilby claims he is going to take, and the credit committee desires that our position be set forth in unmistakable terms.

Yours very truly,

——— ———, *Executive Secretary.*

from F. B., 8–16–28.
HHR.

300 MOTION PICTURE PRODUCERS & DISTRIBUTORS OF AMERICA, INC.

Will H. Hays, President; Carl E. Milliken, Secretary
Office of the president

469 FIFTH AVENUE, NEW YORK CITY, *Mar. 3, 1928.*

MARCH 1ST, 1928.

Mr. E. L. COLE,
Secy., Atlanta Film Board of Trade, Atlanta, Georgia.

DEAR MR. COLE: Attached is confirmation of our wire of even date regarding the Wilby matter.

As soon as this matter was explained in detail to Mr. Hess and after he had reread all correspondence, there was no hesitancy on his part in reiterating his first ruling.

Very truly yours,

(Signed) A. S. DICKINSON,
Director of Conservation.

ASD:P.
MP.
PDA.
From F. B., 8–16–28.
HHR.

301 FILM BOARDS OF TRADE

Charles C. Pettijohn, General Counsel; Gabriel L. Hess, General Attorney

469 FIFTH AVENUE, NEW YORK, *Mar. 5, 1928.*

MARCH 3, 1928.

Mr. E. L. COLE,
Secy. Atlanta Film Board of Trade, Atlanta, Ga.

DEAR MR. COLE: Upon the facts stated in your letter to Mr. Pettijohn of January 19, 1928, and the facts stated in Mr. Wilby's letter

to Mr. Pettijohn of the same date, concerning the transfer of the Ensley and Franklin Theatres, Ensley, Ala., to the Ensley Theatres, Inc., I am of the opinion that the credit committee of your film board of trade will be justified in reporting that such transfers were made for the purpose of avoiding the uncompleted contracts of those theatres warranting the committee in fixing an amount of security which the Ensley Theatres, Inc., should be required to deposit with distributors for the performance of any contract such company desires to enter into.

Please advise your credit committee and the members of your board that while the Ensley Theatres, Inc., cannot be required to assume and carry out the uncompleted contracts of either Mr. Steed or Messrs. Wilby and Kennedy, full authority is given to the credit committee under the credit committee rules, if the facts warrant, to require the Ensley Theatre, Inc., to give security for the purpose before stated. Furthermore, each of the members of your board having contracts with Steed, Wilby, and Kennedy, may proceed to recover damages for breaches thereof before the board of arbitration.

Sincerely yours,

(Signed) GABRIEL L. HESS,
General Attorney.

HD.
From F. B., 8–16–28.
HHR.

302 MARCH 12, 1928.

ENSLEY THEATRES, INC.,
C/o Mr. R. B. Wilby,
Tudor Theatre Bldg., Atlanta, Ga.

GENTLEMEN: This is to advise that the original recommendation of the credit committee in the case of the transfer of the Ensley and Franklin Theatres, at Ensley, Ala., to you has been confirmed. That is, that before entering into any contracts with you for the exhibition of pictures at your theatres in Ensley, Ala., that our members should require from you a deposit of the sum of $500.00 for each of these theatres as security for the performance of any such contracts.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
——— ———, *Secretary.*

From F. B., 8–16–28.
HHR.

303 MARCH 13, 1928.

Registered return receipt requested

ENSLEY THEATRES, INC.,
Ensley, Alabama.

GENTLEMEN: In view of the fact that you have not furnished the Atlanta Film Board of Trade credit committee with the information necessary to intelligently pass upon the transfer of the Ensley Theatre to you, it will be necessary that we ask you for a deposit of $500.00 to guarantee the fulfillment of your contract with us.

We would suggest that you immediately furnish the film board of trade the information requested so that this matter can be finally settled.

Yours very truly,

METRO GOLDWYN MAYER DIST. CORP. OF W. VA.,
———— ————, *Branch Manager.*

LD: MJ.
From M. G. M., 8–14–28.
HHR.

304 MARCH 16, 1928.

ENSLEY THEATRES, INC.,
Ensley, Alabama.

GENTLEMEN: Please disregard our letter of a few days ago, as we will continue to ship films as in the past.

Yours very truly,

METRO GOLDWYN MAYER DIST. CORP. OF W. VA.
———— ————, *Booker.*

LD: MJ.
From M. G. M., 8–14–28.
HHR.

305 Registered R. R. R.

MARCH 13, 1928.

ENSLEY THEATRES, INC.,
C/o Mr. R. B. Wilby, Tudor Theatre Building, Atlanta, Georgia

DEAR MR. WILBY: Inasmuch as the Ensley Theatres, Inc., have not established credit rating with the credit committee of the Atlanta Film Board of Trade, we are obliged to suspend all bookings in the Franklin and Ensley Theatres, effective immediately, unless a deposit of $500.00 is made.

Yours very truly,

PATHE EXCHANGE, INC.,
———— ————, *Head Booker.*

RFP: LC.
From Pathe, 8–9–28.
HHR.

306 MARCH 15, 1928.

Mr. R. B. WILBY,
Ensley Theatres, Inc., Tudor Theatre Building, Atlanta, Georgia.

DEAR MR. WILBY: Please disregard our letter of March 13th, with reference to requiring a deposit for the Ensley Theatres, all service being booked as previously confirmed.

Very truly yours,

PATHE EXCHANGE, INC.,
——— ———, *Head Booker.*

REP: LC.

"Grandma's Boy"—Lloyd's Best
From Pathe, 8–9–28.
HHR.

307 MARCH 13, 1928.

Sent to R. B. WILBY, city

ENSLEY THEATRE, INC.,
Ensley, Ala.

GENTLEMEN: Inasmuch as you have failed to establish your credit rating with the credit committee of the Film Board of Trade, we feel that it is necessary for us to require a $500.00 deposit to guarantee the fulfillment of our contract.

Of course, if you could establish your credit rating with the credit committee then we would gladly withdraw our claim for this deposit, otherwise we deem it advisable to suspend service after to-day.

Yours truly,

R. B. WILLIAMS,
Division Manager.

RBW/G.
From Universal, 8–11–28.
HHR.

308 MARCH 15, 1928.

ENSLEY THEATRES, INC.,
Ensley, Ala.

GENTLEMEN: Kindly disregard our letter of Mar. 13th in which we requested a deposit of $500.00 to guarantee the fulfillment of our contract.

Please expect service as previously arranged.

Yours truly,

R. B. CANN, *Booker.*

G:G.
From Universal, 8–11–28.
HHR.

309 MARCH 13, 1928.

ENSLEY THEATRES, INC.,
Ensley, Ala.

GENTLEMEN: Inasmuch as you have not established a credit rating with the credit committee of the Atlanta Film Board of Trade, it is necessary that we ask for a deposit in the amount of $500.00 before we can ship you further service.

Yours very truly,

FBO PICTURES CORPORATION,
——— ———, *Assistant Manager.*

DOG/p.
From F. B. O., 8–8–28.
HHR.

310 MARCH 15, 1928.

ENSLEY THEATRES, INC.,
Ensley, Ala.

GENTLEMEN: This letter will withdraw our request for deposit made in our letter under date of March 13th.

Yours very truly,

FBO PICTURES CORPORATION,
——— ———, *Assistant Manager.*

DOG/p.
From F. B. O., 8–8–28.
HHR.

311 MARCH 13TH, 1928.

ENSLEY THEATRES, INC.,
Ensley, Alabama (% R. B. Wilby).

GENTLEMEN: Because of your failure to establish satisfactory credit with the credit committee of the Atlanta Film Board of Trade, it becomes necessary that you furnish us with a deposit in the amount of $500.00 to protect our contract and to insure proper handling of our film while in your service.

It will be necessary that we receive this deposit before any further service can be supplied you.

Yours very truly,

TIFFANY-STAHL PRODUCTIONS, INC.
W. G. MINDER, *Southern Division Manager.*

WGM/I.
CC: Mr. E. L. COLE,
Atlanta Film Board of Trade.
From Tiffany, 8–8–28.
HHR.

312 MARCH 15TH, 1928.

Mr. R. B. WILBY,
Tudor Theatre Bldg., Atlanta, Georgia.

DEAR MR. WILBY: This regards my letter under date of March 14th, requesting deposit of $500.00 on contract for Ensley Theatres, Inc.

Kindest regards,

TIFFANY-STAHL PRODUCTION, INC.,
W. G. MINDER, *Branch Manager.*

WGM/I.
From Tiffany, 8–7–28.
HHR.

313 MARCH 15TH, 1928.

Mr. R. B. WILBY,
Tudor Theatre Bldg., Atlanta, Ga.

Re Ensley Theatres, Ensley, Alabama

DEAR MR. WILBY: We will ask that you disregard our letter of the 13th requesting deposit in the amount of $500.00.

We find that it is now not necessary for you to put up this deposit.

Yours very truly,

LIBERTY SPECIALTY FILM DIST. CORP.,
H. P. RHODES, *Asst. Mgr.*

HPR/m.
From Liberty, 8–13–28.
HHR.
250.00, 6/8/28.

314 WESTERN UNION

MARCH 16TH, 1928.

GABRIEL L. HESS,
Film Board of Trade, 469 Fifth Avenue,
New York City, N. Y.

Further investigation Wilby Ensley Theatres, Incorporated, situation develops as follows [stop]. Wilby has personally signed all film contracts in his name and not as theatre [stop]. It appears that if we refuse deliver pictures on contracts signed by Wilby in Ensley which he personally guarantees to fulfill, then his theatres in Tuscaloosa will come under the same ruling as Ensley [stop]. Tuscaloosa theatres operated by Alabama Amusement Company his agents, which are parallel to his Ensley contracts operating methods.

A. C. BROMBERG.

Night letter—Paid.
Charge—A. C. Bromberg, att.
From Bromberg, 8–8–28.
HHR.

(No answer)

315 WESTERN UNION

[Copy]

ATLANTA, GA., *March 14, 1928.*

Mr. GABRIEL HESS,
C/o Hays Organization, New York City.

There is still considerable difficulty and misunderstanding reference this Wilby matter and transfer ownership at Ensley to Ensley Theatre, Incorporated [stop]. As Ensley Theatres, Incorporated, do not assume contracts and as they are not asking to enter into any new contracts, and as R. B. Wilby, former owner Ensley Theatre, has personally signed contracts before new corporation was formed with various exchanges for service in Ensley Theatre for Wilby personally and is willing to fulfill all terms those contracts has any exchange the right to ask either Ensley Theatres, Incorporated, or Bob Wilby for deposit in view fact this was a transfer and ruled upon as FT to escape contracts are we within our rights in asking Wilby to put up deposit before we supply him further service on contracts he had personally signed [stop]. They are now doing business under name Ensley Theatres, Incorporated, so why should we recognize Wilby's personal contracts, for Ensley Theatre as it is shown new corporation was only formed to get rid contracts that had been signed by Joe Steed, who is now part owner this corporation.

H. G. BALLANCE.

Pd. & chg. district office, Paramount.
From Paramount, 8–14–28. HHR.

316 WESTERN UNION

[Copy]

NEW YORK, N. Y., *March 15, 1928.*

H. G. BALLANCE,
Paramount Famous Lasky,
158 Walton Street Northwest, Atlanta, Ga.

Exchanges may not require deposit to secure performance of contracts for pictures at Ensley Theatre, signed by Wilby, and are obligated to continue to serve pictures under such contracts provided Wilby assigns such contracts to Ensley Theatres, Inc. The present owner of Ensley Theatre, however, contracts for new pictures which Ensley Theatre, Inc., desires to enter into must under credit committee report be secured by deposit [stop]. Because Wilby transferred Ensley Theatre to Ensley Theatres, Inc., he has breached contracts which he personally signed. Such contracts, however, may be assigned by him to Ensley Theatres, Inc., and unless such contracts are assigned distributors may proceed against Wilby for breach of those contracts created by transfer of theatre to Ensley Theatres, Inc. [stop]. Upon FT credit committee report members must not

send notices to new owner demanding security in such case. Security should be demanded only when new owner makes application for contract.

GABRIEL L. HESS.

From Paramount, 8–14–28. HHR.

317 WESTERN UNION

(Always open)

JOURNAL BLDG., 7 N. FORSYTH ST., ATLANTA,
1928, Mar. 14, p. m. 7.48.

NB784 58. NL, NEW YORK, N. Y., 14.
E. L. COLE,
Atlanta Film Board of Trade, 101 Marietta Bldg., Atlanta, Ga.

Hanlon of Merto phoned me regarding Wilby matter [stop]. Says deposit letters had been mailed, but credit committee has unearthed new evidence which perhaps will change entire status of case [stop]. Suggest this information be sent Mister Hess immediately, and if this is consensus of credit committee opinion notify Wilby disregard letters until new information is received here.

A. L. DICKINSON.

From F. B. 8–16–28
HHR.

318 WESTERN UNION

1928, MAR. 15, A. M. 10.16.

Received at NB236 84 FE, New York, N. Y., 15 1034A.
E. L. COLE,
Atlanta Film Board of Trade, 215 Marietta Building, Atlanta, Ga.

Advised members your board have made demands for security because of report of credit committee on Ensley Theatre, Inc., [stop]. You should know by this time such action is wrong; if demands for security have already been made see that they are immediately withdrawn [stop]. Upon report of credit committee members as a group must not demand security, and it is only when a new owner makes application for contract to members individually that security should be demanded as condition for making new contract.

GABRIEL L. HESS.

From F. B. 8–16–28
HHR.

319 MARCH 15, 1928.

Mr. GABRIEL L. HESS,
General Attorney, Film Boards of Trade, 496 Fifth Avenue, New York City.

DEAR MR. HESS: I have your wire of even date relative to the Wilby matter, and from the tone of your wire would judge that you are under the impression that I had advised the members of the film board of trade to send out deposit letters in this case, which is entirely wrong.

This matter came up for discussion at the meeting on Monday, and I was very careful to advise each and every member of the board not to send out deposit letters, but to wait until they were asked for service by the Ensley Theatres, Inc., at which time the demand for security should be made.

Am writing this letter to clear up any misunderstanding of the real facts in the case.

With kindest regards,

Yours very truly,

——— ———, *Executive Secretary.*

Since writing the above, I have talked with some of the members who had pictures set in on spot booking basis, and they state that they sent letters demanding security.

Am also informed that certain members of the board are to hold a meeting to-day on this Ensley situation. What the object of the meeting is and what the outcome of it will be I do not know.

From F. B., 8–16–28.

HHR.

320 FILM BOARDS OF TRADE

Charles C. Pettijohn, General Counsel; Gabriel L. Hess, General Attorney

MAR. 24, 1928.

469 FIFTH AVENUE, NEW YORK, *March 22, 1928.*

Mr. E. L. COLE,
Ex. Secretary,
Atlanta Film Board of Trade, 215–101 Marietta Bldg., Atlanta, Ga.

DEAR MR. COLE: This is in reply to your letter of March 15, 1928, relative to the Wilby matter.

Please advise the members of your film board of trade that they may not under the credit committee rules demand security for spot booking contracts. As I have stated before, it is only when the new owner of a theatre whose name appears on your credit information

list seeks to enter into a new contract with the members of your board that demand for security may be made.

Sincerely yours,

GABRIEL L. HESS,
General Attorney.

31:18.
From F. B., 8–16–28.
HHR.

321 WESTERN UNION

1928, MAR. 26, A. M. 11.01.

Received at NA147 101 DL–FE, New York, N. Y., 26 1108A.
CREDIT COMMITTEE, ATLANTA FILM BOARD OF TRADE,
215 Marietta Building, Atlanta, Ga.

After most careful consideration of additional facts and explanations of transfer Ensley and Franklin Theatres to Ensley Theatres, Inc., agree with Mangham and Hanlon that superseding favorable credit report now be made. However, recommend all distributors concerned immediately file claims against Steed and against partnership Wilby and Kennedy so such claims can be determined and awards obtained and if necessary legal proceedings instituted to collect thereon [stop]. Wilby in letters to me states he is in position to and will play unplayed pictures contracted for by him. If he does this, there would be no need to file claims against him.

GABRIEL L. HESS.

From F. B., 8–16–28.
HHR.

322 MARCH 27,1928.

ENSLEY THEATRES, INC.,
% Mr. R. B. Wilby, Tudor Theatre Bldg., Atlanta, Ga.

GENTLEMEN: The credit committee has considered very carefully the information submitted with reference to your future operation of the Ensley and Franklin Theaters at Ensley, Ala., and has reported to the members of this board that you have established a satisfactory credit rating.

Yours very truly,

CREDIT COMMITTEE,
ATLANTA FILM BOARD OF TRADE,
——————— *Secretary.*

From F. B. 8–16–28.
HHR.

323 (*Government Exhibit 8*)

Dallas Film Board of Trade Credit Committee

324 MINUTES OF MEETING

Nov. 23, 1925.

The roll was called and members representing the following distributors were present: First Natl.; Universal; Educational; Enterprise; Famous Pl., Dal.; Famous Pl., San A, ab. X; F. B. O.; Fox; Pro. Dis.; Independent; Metro, ab. X; Pathe; Progress; Liberty; Southwestern, ab.; Specialty, late $5; United Ar.; Vitagraph.

Upon a motion by P. K. Johnston, seconded by M. J. Sparks, the rules and regulations for the establishment and operation of a credit committee were adopted as by-laws of this board as per printed form attached to these minutes with the correction as noted in rule 7 of said by-laws; further, the following was adopted as rule 11 of said by-laws: That this board will not recognize any claims or contracts where there is a change in ownership unless the credit committee of the board has previously advised all members of the legitimacy of the change in ownership as outlined in the said rules and regulations herewith adopted; further, that the adoption of these rules and regulations as by-laws of this board nullifies and supersedes any other existing by-laws in conflict with the by-laws herewith adopted. The resolution was duly passed, with Oscar Morgan casting the one dissenting vote.

Adjourned.

NOTE.—Minutes of this meeting were approved by unanimous vote at the meeting on Dec. 7, 1925.

325 D. F. B. T., JUNE 5, 1926.

Bulletin #227

PAR. 2.

A member has requested that the secretary cite the clause in the standard exhibition contract which gives a distributor authority to demand security deposits upon recommendations made by the credit committee of this board. There is no such clause in the present contract which covers the demand of a security deposit, but the theory is that the contract is merely an application until it is duly accepted and approved by the proper authorities. The membership of this board has created a credit committee for the purpose of ascertaining the status and ability of persons engaged in the theatre business, and when this committee gives an adverse report on an account it is the exchange's prerogative to reject the application or to require ample security of the exhibitor to guarantee performance of the contract. There is no law existing which requires an exchange to deal with undesirable accounts without ample security.

326 D. F. B. T., SEPT. 18, 1926.

Bulletin #241

PAR. 2.

At the request of the credit committee and Mr. Goodlett, of Georgetown, the secretary has checked over his bookings, eliminating thirty duplicate bookings during 1926 and rebooking these on open dates. The only dates allocated by the secretary have been to exchanges who reported refused shipments or who had confirmed dates which conflicted with other prior bookings. Mr. Goodlett has no open time during 1926; a full report will be given to members at the next meeting, and the creditors may allocate the open time during 1927. As reported on credit report #46, the committee has placed a $200 deposit on any new applications signed by Mr. Goodlett. Please bear this in mind and inform your salesmen accordingly. If Mr. Goodlett plays all the pictures he has under contract, he will not have any open time until January, 1928. The committee further requests that bookers refuse to accept changes or to cancel any play dates on Mr. Goodlett's request, since he has authorized the secretary to arrange and allocate all dates. Exchanges will be advised of changes desired, etc., and any requests from Mr. Goodlett should first referred to the secretary in order to eliminate the useless expense of refused shipments.

327 MINUTES OF MEETING

DEC. 20, 1926.

The roll was called and members representing the following distributors were present: First Natl.; Universal; Educational, Enterprise, Fam. Pl., Dal.; Fam. Pl., San A., AX; F. B. O.; Pro. Distr.; Fox; Metro., AX; Pathe; Lib. Specialty; United Art.; Warner; Home State.

Upon a motion of J. B. Dugger, seconded by L. Wilkes, the minutes of the previous meeting were accepted as read. The motion was duly passed.

Upon a motion by J. K. Adams, seconded by J. B. Dugger, that the recommendations of the credit committee in the case of Ross Rainey, of Clarksville, be accepted. The motion was duly passed.

Upon a motion by J. B. Dugger, seconded by J. K. Adams, that the recommendations of the credit committee in the case of Ross Dixon, of Colorado, be rejected and that dates in this situation be allocated in the same manner as the recommendation in the Clarksville matter. The motion was duly passed.

The letter of Dec. 14th from C. C. Pettijohn re credit committee operations was read. Upon a motion by J. B. Dugger, seconded by R. C. McIlheran, that the credit committee of the Dallas Film Board of Trade be continued and not disbanded and that Mr. Pettijohn be so advised and at the same time he be so advised of the constructive work that this committee has done in the Dallas territory. The motion was duly passed.

328 D. F. B. T., JANUARY 15, 1927.

Bulletin 256

1. Regular meeting Monday, January 17th.
2. Conroe, Dugan—status.
3. Claim record.
4. Nontheatricals.

1. The next regular meeting of members will be held at 12.45 p. m. Monday, January 17th. Please be on hand promptly.

2. Members are aware that J. C. Wells of the Dugan, colored, Conroe, is in default of the award of the board. We now understand that S. G. Josey of the Majestic, Conroe, is endeavoring to buy service for this theatre. The credit committee of the board has not determined the status of Mr. Josey as the legal owner of the Dugan Theatre. Please do not overlook this situation.

3. It is suggested by the secretary that exchanges keep a record of their claims filed with the film board. All claims are filed in triplicate, one copy of which is retained by the exchange, and it is suggested that when your claim has been finally disposed of by either the film board or the board of arbitration that you remove your copy of the claim from the file and place it in a separate film board file. It might be a good idea to number these claims, so that at the end of the year you can see exactly what the board has done for you. If any exchange is interested in the number of claims handled for or against them during 1926, please call on the secretary.

4. In Bulletin 255 the secretary requested that all exchanges submit a list of nontheatrical accounts which they were serving that are not already listed on page 45 of the 1926 Almanac. Pathé and First National are the only ones which have given this information. A letter from film boards of trade, New York, advises us that the home offices of all companies want a complete list, and managers are respectfully requested to cooperate. Please let us have this information by Tuesday, January 18th.

Yours very truly,

/S/ DON C. DOUGLAS, *Secretary.*

DCD/L.

329 MINUTES OF MEETING

JANUARY 17, 1927.

The roll was called and members representing the following distributors were present: First Natl.; Universal; Educational; Enterprize; Fam. Pl., Dallas; Fam. Pl., San An.; F. B. O.; Pro. Distr.; Fox; Metro.; Pathé; Liberty-specialty United Artists; Warner; Home-State.

Upon a motion by J. E. Luckett, seconded by J. N. Burd, the minutes of the previous meeting were accepted as read. The motion was duly passed.

By majority vote with J. B. Dugger casting the one dissenting vote, the following recommendation of the credit committee was accepted in the casse of Ross Dixon, Palace, Mission, and Ritz Theatres, Colorado, Texas:

"No applications for service should be taken covering features or dramas (westerns and short subjects excluded) unless the new application cancels an equal number of older pictures already under contract, or the exhibitor may pay for pictures dated and confirmed to be held out in favor of another picture or pictures with another exchange upon proper evidence of this procedure."

Adjourned.

330 D. F. B. T., JAN. 27.

Re National, Eliasville. Byrd Ashburn, purchaser

PARAMOUNT OR ANY MEMBER OF D. F. B. T.:

O. K. to deliver to above 1 spot booking program for Jan. 30th only. Status will be reported next week when report rec'd from purchaser.

D. C. D.

331 D. F. B. T., JANUARY 29, 1927.

Bulletin 257

1. Regular meeting Monday, January 31st.
2. Print of Aesop Fable lost.
3. Theatre fires—status of contracts.
4. Claims filed during 1927.
5. Colorado, Palace, Ritz, Mission—status.

1. The next regular meeting of members will be held at 12.45 p. m. Monday, January 31st. Please be on hand promptly.

2. Pathe has lost a one-reel Aesop Fable #5282, entitled "Through Thick and Thin." This subject was last used in the R. & R. Cisco. Is this print in your possession?

3. Recently, when the Star, Menard, was destroyed by fire, Mr. Reeve was in Dallas and received varying reports from different exchanges regarding the status of his contracts, most of the exchanges informing him that his contracts were cancelled. Members should become better acquainted with the status of contracts in such events. It was generally conceded under the uniform contract in use last year that when a theatre was destroyed by fire the contract was at an end, but the provisions of the standard exhibition contract now in use are quite different. When a theatre is closed for a period of three months or more, either party upon ten days' notice may cancel all pictures dated for exhibition during that period. Please read this clause in your contract.

4. Some members are complaining about their claims not going to arbitration as fast as they think they should. Due to the holidays,

it was necessary to postpone the arbitration meeting scheduled for December 30th. On January 1st there were 56 claims pending with the board, and since January 1st members have filed with the board 170 claims. Every one seems to have cleaned house and it will take some time to work these claims through. All claims are being handled in the order in which they are received.

5. Herewith the recommendation of the credit committee in the case of Ross Dixon, Colorado. This recommendation was sustained by the membership at the regular meeting on January 17th:

"No applications for service should be taken covering features or dramas (westerns and short subjects excluded) unless the new application cancels an equal number of older pictures already under contract or the exhibitor may pay for pictures dated and confirmed to be held out in favor of another picture or pictures with another exchange upon proper evidence of this procedure."

Within the next few days creditors of this situation will receive their allotment of dates during the year beginning April 1st.

Yours very truly,

[S.] DON C. DOUGLAS,
Secretary.

DCD/L.

332 D. F. B. T., FEBRUARY 8, 1927.

Re Palace, Conroe

HOME STATE, FOX, ASSOCIATED EXHIBITORS.

This theater has been carried on credit information reports for the past month, indicating J. C. Oates as the purchaser; however, his status has never been approved and applications for service should not have been accepted or at least not approved.

This theater is now being taken back by W. M. Conroe, who owns the theater and leases it to someone else about every ninety days. Needless to say, contracts bearing the signature of J. C. Oates have no standing before this board.

With particular reference to W. M. Conroe, this party took the theater back from Penn & Myers on August 1st, 1926, and the status of Conroe was approved on credit report, #40, recommending a $50 deposit; hence contracts signed by Conroe prior to August 1st, 1926, have no standing before this board. The only contracts which can be recognized until such time as the status of Conroe is passed upon for the second time are contracts made with Conroe to supersede contracts of former owners, Penn & Myers, or contracts of Penn & Myers ratified and assumed by Conroe.

Please advise us exactly who signed your contracts and the date thereof.

Yours very truly,

DCD/L. ——— ———, *Secretary.*

333 D. F. B. T., FEBRUARY 12, 1927.

Bulletin 258

1. Regular meeting Monday, February 14.
2. Conroe, Palace, W. M. Conroe—status.
3. Dean, Howard L.—whereabouts.

1. The next regular meeting of members will be held at 12.45 p. m. Monday, February 14th. Please be on hand promptly.

2. The Palace Theatre at Conroe, which is owned by W. M. Conroe and leased by Mr. Conroe at regular intervals of one to three months to various parties who, for the greater part, have proved to be very undesirable credit risks. For report on credit report #40, the status of W. M. Conroe was approved recommending a $50 security deposit. The report made at that time indicated that Mr. Conroe took over the theatre August 1, 1926, from the previous lessees, Messrs. Penn & Myers; hence the only contracts which can be recognized are those which Mr. Conroe assumed from Penn & Myers or such contracts made after August 1, 1926, which carry a $50 deposit. It is not known when G. C. Oakes leased the theatre, and the credit committee was never able to establish his status due to failure of the exhibitor to make any report. We understand Mr. Oakes was a very undesirable account. Contracts signed by Oakes have no standing before this board. This theatre now appears on credit information report #66, indicating that it is owned by Mr. Conroe, and the exhibitor has been asked to render another report as the new owner of the theatre. Please do not negotiate with this account until the status of W. M. Conroe is passed upon by the credit committee.

3. Any one knowing the whereabouts of Howard L. Dean kindly advise the secretary.

Respectfully,

/s/ DON C. DOUGLAS, *Secretary.*

DCD/L.

334 D. F. B. T., MAY 28, 1927.

Bulletin 273

PAR. 1.

Mr. Morris of the Queen Amusement Company, San Antonio, appeared before the board of directors Wednesday and acknowledged that contrary to previous advice the Azteca Theatre did not close on April 1, 1926. Hence the theatre has operated for a period of 61 weeks up to June 1, 1927, and has paid for only a part of the service which was under contract to this theatre with Paramount, F. B. O., and Educational. Calculaint (sic) the rental at $75 per week, the total rental due from this situation is $4,575, from which is to be deducted any rentals actually paid for service in this theatre, which will amount to about $1,000. The board of di-

rectors agreed to dispose of the matter on the payment of actual rental of $75 per week, and the board is to-day in receipt of a letter from Mr. Lucchese accepting the proposition and agreeing to make the payment, which he states will amount to about $3,575. This was a little extra work done by the secretary when on his honeymoon. If you have not already done so, send Mr. Morris contracts for signature covering the Azteca for all service booked the circuit effective June 1, 1927, and thereafter.

PAR. 2.

At the last meeting of members the credit committee came in for a lot of panning. In order that the members might have some idea what the credit committee means, the secretary makes the following report on transfers from the first of the year to this date:

71 theatres changed ownership, and in 38 of these changes, or 53%, all film contracts were assumed by the purchaser, these contracts involving $76,000. In 9 of the transfers the contracts were partially assumed, and in 24 of the transfers none of the contracts was assumed.

Certain members dispute that the credit committee in many instances had anything to do with the assumption of the contracts; however, this is disputable, and it should be conceded that the mere existence of the credit committee had a great deal to do with the salvaging of the $76,000 worth of contracts.

Respectfully,

/s/ DON C. DOUGLAS, *Secretary.*

DCD/L.

335 D. F. B. T., JULY 16, 1927.

Bulletin 277

"CREDIT COMMITTEE ETHICS"

The following are the rules and ethics which members agreed upon with reference to change in ownership. The principal change is that members will refrain from accepting and delivering service on superseding contracts until the status of the purchaser has been passed upon by the credit committee. It may be well to send a copy of this to salesmen.

1. To cease the practice of immediately sending salesmen into a town where a change of o/s has been reported prior to the establishment of the purchaser's status.

2. Salesmen accepting applications from new owners should—

a. Inform the exhibitor of the necessity of filling out the questionnaire for the credit committee, advising him the application will not be accepted by his office until such report is received and passed upon.

b. Salesman accepting applications from new owners should specifically advise their office that the signer of the contract is a new

owner and should advise their office of any other information they have regarding the new owner and his disposition to existing contracts.

3. Applications may be accepted from purchasers but should not be forwarded to the office for approval until report of the credit committee is received. Such applications should be reported to the secretary of the board for proper record.

4. Creditors of the situation may take assignments and fulfill contracts according to terms without awaiting report of the credit committee.

5. Credifors of the situation may take superseding contracts for the same or less number of pictures, said contracts to be marked in lieu of former owner's contracts; however, said superseding contracts should not be forwarded for approval until establishment of purchaser's status and should be reported to the secretary for proper record.

6. Managers to be held strictly accountable for carrying out these instructions and other rules and regulations of the credit commmittee. Effective immediately, members to recommend for suspension where violation of these or any other rules occur.

7. New owners coming to Dallas to adjust or make contracts should not be dealt with in any respect until after report given credit committee. The one exception would be to get an assignment by both former owner and purchaser.

Respectfully,

DCD/L. ———————, *Secretary.*

336 D. F. B. T., SEPT. 25, 1926.

Bulletin #242

PAR. 3.

Due to the great number of pictures under contract and the confused state of bookings, the committee recommends a $200 deposit on the Crescent, Garland. This applies to new applications for service.

NEW ORLEANS FILM BOARD OF TRADE,
New Orleans, La., December 16, 1927.

Mr. DON DOUGLAS,
Secretary Dallas Film Board of Trade, Dallas, Texas.

DEAR DON: Your telegram of December 15, requesting that we permit ylour board to pass on transfer of Thelma Theatre, Orangefield, Texas; this is O. K., as only two of our members hold contracts with this account, as follows:

Educational—Cont. 6/14/26—21 two-reel comedies; total amount, $63.00.

Pathé Exchange—Cont. 1/29/27—6 features, 1 Maloney, 3 comedies—$48.00.

Please advise us immediately after same has been acted upon by your credit committee.

The Pathé contract has been assumed, said assumption being in writing.

Sincerely yours,

NEW ORLEANS FILM BOARD OF TRADE,
J. B. HEINE, *Secretary.*

338 D. F. B. T., MAR. 3, 1928.

Star, Del Rio. Important

NOTE.—4, 6, 14, 23 Educational, F. B. O., Pathé, and Warner Vit.

Members are aware that Lochabay and Dawson, former owners of the above are in default of an award of the Board of arbitration and security letters were sent out Feby. 29th.

We are now in receipt of the following wire:

"We have bought Star at Del Rio; take charge Monday March 5th. Are not assuming any contracts.

"(Signed) DOBBIN & GOWENS,
"By Mrs. J. F. GOWENS."

The status of the purchasers has not been established, hence all service should be discontinued at once for the reason that purchasers have declared that contracts will not be assumed. Furthermore contracts with the former owners are not subject to assignment so long as they are in default of the board's award.

Please regard the status of this account until advised further.

Respectively,

DON C. DOUGLAS, *Secy.*

339 FEBRUARY 5, 1927.

DREAMLAND THEATRE,
Lakeview, Texas.

GENTLEMEN: We addressed you under date of December 27th and January 7th respectfully requesting that the purchaser of the Dreamland Theatre, provided there had been any change in the ownership, fill out and return one of the enclosed forms.

The Fox Film Company advises that they have received a wire from Gabe Garrett requesting service, but they are reluctant to ship any films until the status of the purchaser has been ascertained by the credit committee of this board or until such time as Mr. Garrett enters into an assignment covering the contract with Mr. Baker had with Fox. If the present owner desires to get service, it will be necessary that we have this form.

Please let us hear from you by return mail; also advise if contracts with Home State, Liberty-Specialty, and Fox are going to be assumed.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

340 FEBRUARY 14, 1927.

MR. GABE GARRETT,
Dreamland Theatre, Lakeview, Texas.

DEAR MR. GARRETT: We have referred your report to the credit committee of the board and are pleased to say that they have approved your status as the new owner of the Dreamland Theatre, recommending a $50 deposit on new applications for service, this to guarantee the faithful performance of contracts and to be returned thereafter. This recommendation is not made with the view of placing any hardship on you, but you must appreciate that this situation in the past has not always been very satisfactory. I can assure you that if you operate the theatre for a period of months in a satisfactory way there is no question in my mind but what the credit committee will retract their recommendation.

We notice your remarks regarding Mr. Baker's contracts, and we are to-day requesting the following exchanges to advise you the status of his contracts with the view that you might assume such as you see fit: Home State, Liberty-Specialty, Fox, and F. B. O., Oklahoma City.

These, of course, are Mr. Baker's obligations, but he may assign these contracts to you without the consent of the distributors. Of course, security deposits can not be secured where contracts are assigned.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

341 FEBRUARY 28, 1927.

FAMILY THEATRE,
Houston, Texas.

DEAR MR. HALL: This will acknowledge your two letters regarding contracts. I believe we have already explained this situation in our letters of January 20th and February 2nd.

When you first took over the theatre, you informed us that you would assume the Pathe, Metro, and First National contracts, but you have since advised these respective exchanges that you are only going to assume a part of them, and already we have a number of complaints about your refusing films.

In view of this condition, and further in view of the fact there are several thousand dollars worth of contracts which you made at the time you intended to open the Bijou Theatre, the credit committee have approved your status recommending a $200 deposit on new applications for service until such time as something more definite is known about your status. We urgently suggest that you come to some definite understanding with the three exchanges mentioned above; and if you desire to ignore all contracts which have been made in the past you may do so, but we believe the exchanges

are going to require some security on any new contracts that you make in order to avoid a repetition of what has already happened.

We are to-day writing the various exchanges involved to report to us the status of your account at this time.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

342 D. F. B. T., FEBRUARY 15, 1927.

Re New Palace, Seagraves

RALPH LINDSAY, purchaser (very important):

The above account, formerly known as the Electric, under the ownership of Andy Williams, was in default of an award of the board and service had been suspended. The theatre has been closed for some time, but was first reported on credit report #64 on January 29th, indicating that Ralph Lindsey was the reported purchaser. Needless to say, applications for service were not in order until the status of the purchaser had been approved.

On credit report #66 of February 12th the status of Ralph Lindsey was approved, he assuming no contracts. Prior to receipt of the credit report from the exhibitor, First National accepted an application from the exhibitor, but would not send it through for approval or give the exhibitor any definite acknowledgment until the report was received from the exhibitor and his status established. As soon as this was ascertained and passed upon, First National wired acceptance of their contract in due time. Now the exhibitor wires First National to cancel their contract—that dates have been filled with another exchange. Evidently some one has accepted a contract from Mr. Lindsey prior to approval of his status. Will any member holding contract with Mr. Lindsey please notify the secretary at once, as he is going to be obliged to respect the First National contract?

Please bear in mind that contracts accepted prior to the approval of the purchaser's status by the credit committee have no standing before this board unless such applications are reported to the secretary and a record made thereof. This is very important, and we urgently request that you give your attention, as the whole purpose of the credit committee will be defeated if matters of this kind are not watched more carefully.

Incidently, Paramount rejected the exhibitor's application until his status was approved, and it is unfair to these exchanges if other exchanges have accepted and approved the applications without due regard to the exhibitor's status.

Yours very truly,

/s/ DON. C. DOUGLAS, *Secretary.*

DCD/L.

343 NOVEMBER 14, 1927.

NEW PALACE THEATRE,
Seagraves, Texas.

DEAR MR. BROOKS: In view of the statement of facts as set forth in your questionnaire as the new lessee of the New Palace Theatre, the credit committee of the board has approved your status recommending a $100 deposit on any new applications for service, this deposit to remain with the exchange until such time as you have become established.

The reason for this action is not to place any undue hardship on you; however the exchanges have had no great amount of dealings with you, and frankly the situation at Seagraves has been very undesirable for the past year.

Just as soon as you become established there is little question but what they will retract their recommendation.

Wishing you success, I am,

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

344 NEW PALACE THEATRES

Willis L. Brooks, Prop. Jerry Stancil, Business Mgr.
"The shows that never made a nickle"

SEAGRAVES, TEXAS, *Nov. 16, 1927.*

FILM BOARD TRADE,
Dallas, Texas.

DEAR SIRS: It seems that you do not wish to do business with me on any grounds, as I have sent you telegrams, written you letters, and most everything that I know to do and even sent you papers from the notary public here showing where I had bought the lease from Mr. Lindsey, and still you seem to want to push me down a little deeper.

Mr. Douglas, you are not the man that I thought you were, for you know that I don't owe you are the film board a red cent, and neither do I owe any one else any thing, so why do you want to ask $100.00 deposit of me when I have always shot square with every one of you.

You don't seem to know me at all from the way you write, and you say I haven't bought many pictures or you seem to think that I am a new beginner in this game, but I wish to tell you here that I have had about 10 years of motion-picture business and that you can't talk me out of no $100.00 that easy by any means. Besides if I hadn't ever bought but one picture that is no reason why I should pay a deposit, as I have not gone in debt to any one, and have only run my own contract. I'm sure that this theatre here has been under poor management and is in bad with you, but,

listen, these parties have nothing else to do with this theatre whatsoever, and I am trying to straighten things up.

I don't want to get hard at all, but, listen, I do want some pictures out here, and if I have to come to Dallas after them it will cost you some money, because you have no right to hold films from me, as I have never done anything to keep me from receiving pictures. I don't blame you or the board from closing show for the way things had been run heretofore, but that don't have any obligations on me, as I have released this theatre and Mr. Lindsey has no control of whatsoever.

Please straighten this matter at once and allow my contract to be released at once. Hoping see my view of this situation and help me to put this show over.

Yours very truly,

WILLIS L. BROOKS.

345 NOVEMBER 17, 1927.

NEW PALACE THEATRE,
Seagraves, Texas.

DEAR MR. BROOKS: This will acknowledge receipt of your letter of the 15th to which you attach affidavit that you have leased the New Palace Theatre.

We have never disputed that you have actually leased the theatre, and endeavored to explain the position of exchanges in our letter of November 14th. Since you have the theatre leased for only a short time, would suggest that you make contracts covering that period only; and if you place a deposit with any exchange, we are here to see that it is returned to you upon completion of your contract. Please rest assured of that.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

346 D. F. B. T., DECEMBER 4, 1926.

Bulletin 252

1. Regular meeting Monday, December 6.
2. New tire cards.
3. Hebbronville, Majestic, W. A. Dannelley—status.
4. Mission, Lapaz, Juan Barbera—status.

1. The next regular meeting of members will be held at 12.45 p. m. Monday, December 6. Please be on hand promptly.

2. Herewith new tire cards expiring in March 1927. Members will please deliver these cards to their various employees; and if any have been overlooked, kindly advise the secretary at once.

3. Members' attention is called to the status of W. A. Dannelley of the Majestic, Hebbronville, whose credit status was approved recommending a $200.00 deposit. Mr. Dannelley agreed to assume

or satisfy contracts that he previously made when he operated the theatre, also contracts signed by the last owner, Miss C. Stroman. These contracts were with the following exchanges: Home-State, Liberty-Specialty, F. O. B., First National, Associated Exhibitors. Will these exchanges please advise if they have made satisfactory arrangements with Mr. Dannelley; and if any other exchanges have taken applications, kindly advise the secretary at once.

4. Attention of members is again called to the status of Juan Barbera, Lapaz, Mission, and Weslaco. Mr. Barbera is in default of the award of the board of arbitration and has been carried on the board's undesirable list for some time. The award is of a very serious nature, and interested exchanges might call on the board for further information.

Yours very truly,

/s/ DON C. DOUGLAS, *Secretar'*.

DCD/L.

351 PASTIME THEATRE

Clifton & Whaley, Props.

ESTELLINE, TEXAS, *12-6-26*

DALLAS FILM BOARD OF TRADE,
Dallas, Tx.

GENTLEMEN: I am enclosing form you sent and further explaining why I wish to cancel contracts. Clifton & Whaley were new in the show business and they bought to many pictures. They also got balled up on dates; in fact, the whole thing is in one mess. Just to show you how bad a mess—"The wanderer," "Barefoot boy," "There you are"—come here to-day all 3 booked for Mon. & Tue. They cant tell me how it hap'ened that they had 3 pictures for the same date and they have other conflicting dates. I have found two pictures dated for Dec. 25. I thought the best thing to do was to cancel everything and rebuy and get straightened out.

You mentioned the award of the Okla. board of arbitration against me. I was under the impression (in fact Mr. Quade, a Universal salesman, told me) this award had been disposed of. Yes, the Estelline Theatre was destroyed by fire May the 8th, 1925, and I myself was very near destroyed. Still have sores on my hands. Did not do a lick of any kind of work until the later part of Aug. and did not make a dime from the time I was burned until I begin operating for the show here. The only way I could acct. for the fire was that I had 4 reels pasted together and wound on a big reel and set it on a shelf and set it on an extension lamp cord I had in booth. The film caught fire rite under bottom where it was sit'ing on shelf. I picked it up and tried to carry it out. The booth door was fastened. So you can imagine about what would hap'en to a

fellow standing in 4000 ft. of burning film trying to open a door with a man on outside pulling with all his might.

I hope my explanation will be satisfactory. I know that you can plainly see that no little town show should book so many pictures on so many different contracts. I can find where they had 296 pictures booked beside the short stuff they had. They have some of their contracts misplaced, also part of their datings, so I or them either can't tell exactly how many they have unplayed or how many they have played. I know if the distributors could just see what a mess it is they will not object to cancelling the contracts, and anything you feel like doing for me will be appreciated. I want to try to do the right thing by every one concerned.

Yours truly,

PASTIME THEATRE,
/s/ J. H. FARLEY, *Lessee.*

352 DECEMBER 13, 1926.

OKLAHOMA CITY FILM BOARD OF TRADE,
623 Security Bldg., Oklahoma City, Okla.

Re: Estelline, Estelline

DEAR ZEARS: This will acknowledge yours of the 10th regarding the above.

I do not believe any of the Oklahome exchanges have contracts with this situation; however, if you find any, please let me know immediately and caution your members as to the status of this account.

In view of the report rendered, the credit committee of this board has approved the status of J. H. Farley, the purchaser, recommending a $200 deposit on new applications for service.

Now, regarding Universal's award, I admit that I do not know the legality of this award. The contract provides that the contract is voided if the exhibitor's theatre is destroyed by fire, and it would be construed from the wording of the clause that the exhibitor could not be held responsible for film destroyed in a fire. Inasmuch as this is your award, I wish you would write Mr. Hess for his opinion. If he says that the award is legal under the circumstances, and it is Universal's desire to enforce it, then I presume it will be in order to proceed against Mr. Farley.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

353 OCTOBER 10, 1927.

OKLAHOMA CITY FILM BOARD OF TRADE,
623 Security Bldg., Oklahoma City, Okla.

DEAR ZEARS: This will acknowledge receipt of yours of the 8th regarding J. H. Farley, Pastime, Estelline, and R. B. Smith, Dixie, Abernathy.

The attached copy of our letter to Mr. Smith is self-explanatory, and would suggest that unless satisfactory arrangements are made within seven days that a claim be filed.

Now regarding J. H. Farley, we advised you some time ago that the status of Mr. Farley has been approved by the credit committee recommending a $200.00 deposit for any new applications for service. Mr. Farley purchased the Pastime, Estelline, and tried to evade the former owner's contracts in spite of the fact that we were advised by the former owners that their agreement fully provided for the assumption and fulfillment of their contracts; and since they were responsible parties, they insisted that we protect them. Since that time we have been informed by the creditors of the situation that contracts were properly reinstated and are now being fulfilled; and at the meeting of the credit committee Saturday their former recommendation was retracted.

I recall we had some correspondence about the legality of Universal's award. Mr. Farley wrote me that the Universal salesman, Mr. Quade, advised him the matter had been dropped; however, I believe at one time Mr. Farley said he acknowledged the obligation and would pay it as soon as he was able. Suppose you address Mr. Farley and ascertain his attitude regarding this award.

With kindest regards, I am,

Yours very truly,

——— ———, *Secretary.*

DCD/L.

354

D. F. B. T., October 26, 1927.

Re: Pastime, Estelline, Paramount

Dear Mr. Dugger: Answering your letter of October 20th regarding Tiffany's serving the above, I am always glad for members to interest themselves in matters of this kind and to go into them carefully.

It is true the status of Mr. Farley as the purchaser was approved in December recommending a $200 deposit. The reason for this was that the former owners, Messrs. Whaley & Clifton, advised us that they had leased the theatre to Mr. Farley with the understanding that he was to assume and fulfill their contracts; but when Mr. Farley assumed management he endeavored to repudiate their contracts. However, our records indicate that your 41-picture contract, as well as all others, was subsequently assumed by Mr. Farley. The last contract to be taken care of was the Warner Brothers contract, and when this was finally taken care of there was no reason for further restrictions on Mr. Farley.

Now regarding Tiffany, Mr. Huey advised that he had an application from Mr. Farley and was aware of his status. I investigated the matter very carefully, and found that all creditors were properly taken care of, whereupon I recommended to the credit committee that Mr. Farley's status be cleared; and this was done on credit

report #100 on October 8th. Hence Tiffany in serving their picture for use October 15th was not acting in bad faith.

Yours very truly,

——— ———, *Secretary.*

DCD/L.

355 FAMOUS PLAYERS–LASKY CORPORATION,
PARAMOUNT PICTURES,
300 So. Jefferson St., Dallas, Texas, December 6, 1926.

Mr. DON C. DOUGLAS,
Secretary, Dallas Film Board of Trade, Dallas, Texas.

MY DEAR MR. DOUGLAS: We are just in receipt of a letter from Mr. Farley, informing us that he has taken over the Pastime Theatre at Estelline, Texas, and requesting us to cancel all contracts, as he wishes to rebuy.

Our records show that Mr. Farley originally owned this theatre and leased same to Clifton & Whaley and had them assume his contracts.

Our contracts are made out in the name of J. H. Farley, and we feel that he should again assume these contracts, if my interpretation of clause 13 on the uniform contract is correct.

Will you please advise me your opinion in this matter.

Thanking you for your many past courtesies, I am

Yours very truly,

/s/ ARTHUR A. KOEBRICH,
Sales Manager.

AAK/s.

356 OKLAHOMA CITY FILM BOARD OF TRADE,
Telephone Walnut 2248
OFFICE OF SECRETARY, 623 SECURITY BUILDING,
Oklahoma City, Oklahoma, 8 October, 1927.

Mr. DON DOUGLAS,
Secretary, Dallas Film Board of Trade, Dallas, Texas.

DEAR DON: Will you please advise me the status of the following exhibitors with your board:

J. H. Farley, Estelline Theatre, Estelline, Texas.

R. B. Smith, Dixie Theatre, Abernathy, Texas.

Universal has just called and advised Smith is not playing any of their service, and unless they get some dates they are going to file claim against him.

Farley has an award against him in favor of Universal, and we are informed he is using service from Fox, Metro, Paramount, and Vitagraph. I have not had a chance to check up yet on this, and it may be this service is coming out of here.

Any information on the above will be appreciated.

Yours very truly,

CHAS. R. ZEARS,
Secretary, Oklahoma City Film Board of Trade.

P. S.—Think Gid Howel'll ever kick in with that five bucks?

357

DECEMBER 9, 1926.

Mr. J. H. FARLEY,
Pastime Theatre, Estelline, Texas.

DEAR MR. FARLEY: This will acknowledge receipt of yours of the 6th in which you enclose the questionnaire as the lessee of the Pastime Theatre.

We have made a thorough check of your contracts here and find that there 209 features under contract as follows:

Liberty-Specialty, 53.
Warner Brothers, 26.
Famous Players, 41.
Metro, 41.
Fox, 48.

There also appears to be 52 two-reel comedies with Liberty-Specialty, 52 two-reel comedies with Fox, and some short subjects with Pathe.

We notice you have listed Mid-West in your form. Please be advised that Mid-West is not a member of the Dallas Film Board of Trade, and their contracts are therefore beyond our jurisdiction.

We have written Oklahoma City to find out if there are any contracts there and will let you know as soon as we hear from them,

Famous Players advise that they have made satisfactory arrangements with you to assume their contract, but none of the others seem to have any definite information.

You state in your letter you find contracts for 293 pictures, but this does not seem to be exactly correct in view of the report which we made above.

Will you kindly advise us how many programs a week you desire to play and if your attitude has changed any toward assuming all or a part of Clifton & Whaley's contracts? Clifton & Whaley, of course, are legally responsible for payment under their contracts, and exchanges are very anxious to know what recourse to take. I believe the above are all the pictures which are under contract, and I might say that if there are too many pictures under contract I believe the various exchanges would agree to cancel a certain percentage of them in order that you would not be overbought.

We are conveying the information to Oklahoma City regarding your fire, and I am of the opinion that you will be relieved of such

Contracts as you made at the time you operated the Estelline
358 Theatre.

Will you please let us hear from you further, advising if in the meantime you have made satisfactory arrangements with any of the other exchanges holding contracts with the former owners? Also advise us the names of any exchanges with whom you have signed applications for service since you took charge of the

theatre on December 2nd. The questionnaire will then be referred to the credit committee for action.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

359 OKLAHOMA CITY FILM BOARD OF TRADE,
OFFICE OF SECRETARY, 623 SECURITY BUILDING,
Oklahoma City, Oklahoma, 10 December, 1926.

Mr. DON DOUGLAS,
Secretary, Dallas Film Board of Trade, Dallas, Texas.

Re Estelline, Texas

DEAR DON: I am in receipt of your two communications relative to the above account.

Universal's award is in the amount of $240.00 for film destroyed in the fire on May 8, 1926. I do not know whether the fire will nullify the award or not; if so there is nothing to do but cancel same. However, it looks like if he had enought money to buy this theatre he would have enough to pay for this destroyed film. I had a letter from Farley dated July 31st advising he was broke and much in debt due to injury and loss of work account of the fire.

I am endeavoring to ascertain whether there is any service under contract with Clifton & Whaley and will advise you on same. In the meantime I shall carry Farley on credit report until you advise further.

Yours very truly,

/s/ ZEARS.
CHAS. R. ZEARS,
Secretary, Oklahoma City Film Board of Trade.

P. S.—I am under the impression that if an exhibitor's house burns down and he stays out of the business for 90 days, he can not be held on his old contracts. Is this correct? C. R. Z.

360 H. Clifton. W. M. Whaley.
Clifton & Whaley, Props.

PASTIME THEATRE,
Estelline, Texas, 1-26-27.

DALLAS FILM BOARD,
Dallas, Tx.

DEAR MR. DOUGLAS: On the 19th of this month I wrote you to try to work out a plan whereby I could use pictures from each Co. Clifton and Whaley had contracts with. I wrote Metro Goldwyn and Warner Bros. on the same date asking them to cooperate with you in the matter. Just received letters from each of them, and it seems that nothing but immediate play dates will satisfy either. If

you have not already given this mat'er your attention, please do so at your earliest convenience and let me know the results.

Yours truly,

/s/ J. H. FARLEY.

361

FEBRUARY 1, 1927.

Mr. J. H. FARLEY,
Pastime Theatre, Estelline, Texas.

DEAR MR. FARLEY: We have your various letters regarding fulfillment of contracts made by Clifton & Whaley.

As we understood the matter, your lease agreement with them provided that you were to assume and fulfill their contracts; however, if you were able to make satisfactory cancellation with the exchanges that was to be your privilege. Is it the contention of Messrs. Clifton & Whaley that you are to satisfy their contracts.

I referred your recent letter to the credit committee of the board, and they do not feel that the circumstances justify any elimination of the contracts, as the situation does not seem to be badly overbought.

In our letter of December 9th, we outlined fully the various contracts which existed, indicating that there were 209 features under contract as follows:

Liberty-Specialty, 53.
Warner Brothers, 26.
Famous Players, 41.
Metro, 41.
Fox, 48.
Also Pathe short subjects.

You have already assumed the Paramount, Fox, Liberty-Specialty, and Pathe contracts, and, according to our information, there should not be more than 180 pictures under contract at this time. This, of course, does not include the Mid-West, which contract we do not have any knowledge of, as they are not a member of this board and are beyond our jurisdiction.

We notice you are willing to attempt to play four pictures a week, and would suggest that you submit Warner Brothers and Metro dates, as we believe you can work the matter out where contracts can be satisfied without necessitating the exchanges to take any recourse against Clifton & Whaley.

Yours very truly,

DCD/L.

362

D. F. B. T., FEBRUARY 3, 1927.

Re Pastime, Estelline—Metro

Referring to the attached letter, at present there are only about 180 pictures under contract with this theatre including yours. The

exhibitor is using three programs a week on contracts which he assumed from Famous Players, Fox, and Liberty-Specialty. The exhibitor advises that he is going to try to use four programs a week, and we have suggested to him that he give the extra date to you and Warner Brothers. You already have an award covering your contract against the former owners, and our suggestion is that you press compliance of your award with Clifton & Whaley, the former owners. It is our understanding that unless Mr. Farley will assume and fulfill the contracts of the former owners his lease will very likely be cancelled and the theatre will revert to Clifton & Whaley. We are working on the present owner, Mr. Farley, and suggest that you keep after the former owners to have them insist upon Mr. Farley's assuming your contract.

Yours very truly,

DCD/L. ——— ———, *Secretary.*

363 FEBRUARY 14, 1927.

Mr. ALFRED WALLACE,
Hidalgo Theatre, 2215 Congress Ave., Houston, Texas.

DEAR MR. WALLACE: We referred your report to the credit committee at their last meeting and are pleased to say that they have approved the status of the new owner of the Hadalgo Theater recommending a $50 deposit be made upon the signing of application for service, this deposit to guarantee the faithful performance of contracts and to be returned thereafter.

This theater in the past, which was known as the San Jose, has been a very undesirable account for members of this board, but the exchanges have faith in your ability to operate the theater and they are approving your status with the minimum security deposit. It is not the purpose of this recommendation to place any handicap in your way, and we can assure you that if you conduct the theater for a period of months and your account is satisfactory there is no question but what the credit committee will retract their recommendation.

Do you know the present whereabouts of Ramon Rocha, who formerly operated this theater, and who is still responsible for contracts with Universal, FBO, and F. B. O.? Does Mr. Rocha have any interest in the theater at present, and was anything said to you about fulfilling his contracts?

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

Bulletin 259

1. Rules and regulations of credit committee.
2. J. E. Lett, jr.—whereabouts.
3. Weslaco, Azteca—new show.
4. Cushing, Crown.
5. Charitable accounts for 1927.

1. Herewith rules and regulations governing the credit committee of this board. Strictly according to the wording of these rules and regulations members are not to take applications for service from purchasers or new owners of theatres until their status has been established by the credit committee of the board. This board, however, has never enforced the strict provisions of the rule, realizing that it is impractical. When salesmen are on the ground and the theatre is changing hands, they may take applications from the purchaser, but the salesman should inform the purchaser of the necessity of having his status established; and in presenting the application to his exchange, the salesman should call the manager's attention to the fact that the signer of the contract is a new owner. It is the manager's duty to see that applications are not finally accepted and approved until the status of the purchaser has been reported upon by the credit committee. Please bear this in mind, and it is further suggested that this information be given to salesmen.

2. Anyone knowing the whereabouts of J. E. Lett, jr., kindly notify the secretary.

3. Daniel Guevara, formerly of Point Isabel, is opening the Azteca Theatre in Weslaco. He advises he is in the market for the following service: Tom Mix, Gibbons, Fairbanks, William Hart, and other western pictures, as well as comedies.

4. Members should be aware that Mrs. J. D. Denny of the Crown, Cushing, has been in default of an award of the board for over a year. Please check your records to see if you are serving this account; also have your booker refer to list of February 18th giving the names of other exhibitors who are in default of awards.

5. Questionnaires from charitable institutions were referred to the committee appointed by the president, and this is to advise that the Buckner's Orphanage is the only institution that is properly equipped and meets the requirements of the committee; hence this is the only institution on our 1927 charitable list; however, others will be added later when they meet the necessary requirements.

Yours very truly,

/s/ DON C. DOUGLAS, *Secretary.*

DCD/L.

365 W. L. Foster, pres.; J. S. Johnston, vice pres.; J. T. Davis, jr., vice pres.; J. S. Cole, cashier; S. A. Maheffey, asst. cashier.

Capital, $60,000.00; undivided profits, $70,000.00

FIRST NATIONAL BANK,
STERLING CITY, TEXAS,
December 1, 1927.

Mr. DON DOUGLAS,
Dallas Film Board of Trade,
Dallas, Texas.

DEAR SIR: On November 28, 1927, Mr. R. B. McEntire, jr., one of our customers, bought from H. M. Knight and S. D. Guimarin the Lyric Theatre in Sterling City, and my knowledge of this transaction is such that I know the sale was and is bona fide, that Mr. McEntire bought the show in its entirety, and is not acting in collusion with anyone for any purpose, but now owns absolutely the whole equipment and he only will participate in its earnings or loss.

The building housing this show is owned by W. L. Foster and J. T. Davis of this bank and is now rented by Mr. McEntire.

I further know that Mr. McEntire did not know of the difficulty between the film board of trade and Messrs. Knight and Guimarin until apprized by Mr. Cecil E. House, Paramount representative, to-day.

Mr. McEntire is a gentleman, reliable, and I feel sure you will have no cause to complain of any matter with him.

Yours very truly,

/s/ J. S. COLE, *Cashier.*

366 DECEMBER 1, 1927.

Mr. R. B. MCINTYRE,
Sterling City, Texas.

DEAR MR. MCINTYRE: We understand that you are taking over the Lyric Theatre from Mr. Knight, and as the purchaser or new owner we are enclosing a form to be filled out in order that your status may be established. Under question #10 please advise if in taking over the theatre any provision has been made for the assumption and fulfillment of Mr. Knight's uncompleted contracts with the following exchanges:

First National.	Universal.
Educational.	Film Booking Offices.
Fox.	Metro-Goldwyn-Mayer.
Pathe-PDC.	Home State.
Paramount.	

We also call your attention to the fact that Mr. Knight is in default of an arbitration award dated September 29th directing that he pay the Home State Film Company $170, this being rentals accrued under a contract of June 16, 1926.

Whereas the standard exhibition contract provides that when an exhibitor sells his theatre he may assign the contracts without the consent of the distributor, provided evidence of the assignment is at hand, however, it is doubtfuly whether or not such assignment would be in order so long as Mr. Knight is in default of the arbitration award which entitles exchanges holding these contracts to demand security deposits to guarantee their performance.

These obligations are, of course, Mr. Knight's, and we trust that provision has been made for their assumption, since he is responsible for the obligations even though he might have disposed of the theatre.

Also please advise us if you are related to Mr. Knight either by marriage or by blood.

Awaiting an early reply and wishing you success, I am

Yours very truly,

DCD/L. ——— ———, *Secretary.*

367 D. F. B. T., DECEMBER 3, 1927.

Bulletin 291

PAR. 5.

Members are aware that H. M. Knight of the Lyric, Sterling City, is in default of an arbitration award and service has been suspended. We are now informed that the theatre will be sold to R. B. McIntyre, whose status has not been passed upon as yet. This is to remind exchanges that Mr. Knight's contracts can not be assigned to Mr. McIntyre so long as he is in default of an arbitration award for the reason that your contract provides that the security should be forthcoming or that service may be suspended or the contract terminated, as you elect.

Yours very truly,

/s/ DON C. DOUGLAS, *Secretary.*

DCD/L.

368 WESTERN UNION TELEGRAM

DECEMBER 5, 1927.

Mr. R. B. MCENTYRE, JR.,
Sterling City, Texas.

Urgently suggest you come to Dallas to establish yourself with exchanges.

DON C. DOUGLAS.

PD CHG.
Dallas Film Board of Trade.

369 DECEMBER 15, 1927.

Mr. R. B. McENTIRE, JR.,
Lyric Theatre, Sterling City, Texas.

DEAR MR. MCENTIRE. The credit committee has acted upon your report as the purchaser or new owner of the Lyric Theatre, and in view of the report the credit committee has approved your status as the new owner recommending, however, that a security deposit be placed with any exchange with whom contracts are made, this deposit to remain with the exchange to guarantee the faithful performance of the contract and to be returned to you upon completion of the contract, or it is possible after you have become established with the exchanges the *the* credit committee will see fit to retract their recommendation.

You state you are not assuming Mr. Knight's contracts, and that is your prerogative, since you are not legally responsible for Mr. Knight's obligations in this respect.

Wishing you success, I am

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

370 FEBRUARY 23, 1927.

Mr. R. V. RANEY,
Camp Wood Theatre, Camp Wood Texas.

DEAR MR. RANEY: We referred your question'aire to the credit committee of the board, and in view of the statements made, particularly the fact that you have no previous experience in the show business, the committee has approved your credit status recommending a $100 security deposit on any new applications for service, this to guarantee the faithful performance of the contract and to be returned thereafter.

Please understand that this is not done for the purpose of placing any handicap in your way, and there is no question in my mind that if you operate the theatre successfully and without complaint for a period of a few months the credit committee will see fit to retract their recommendation.

The previous owner, Mr. Robbins, proved to be a very satisfactory account, and we can not understand why you should not be willing to assume and fulfill his contracts, which would give you an opportunity to get the swing of things.

We notice you have made satisfactory arrangements with Famous Players, but Mr. Robbins' contracts with Universal and Pathe have not been assumed by you. These, of course, are Mr. Robbins' obligations, even though he has disposed of the theatre, and we presume that the exchanges will take recourse against Mr. Robbins unless he assigns

the contracts to you, which according to the terms of the contracts, he may do without the consent of the distributor.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

377 THE MISSION THEATRE

R. N. Smith, owner and manager

"Home of the Grapefruit"

Mission, Texas, Apr. 4, 1927.

DALLAS FILM BOARD OF TRADE,
Dallas Texas, attention Mr. Douglas.

DEAR SIR: Will you please advise me by return mail as to just what state of affairs the Concordia Theatre has gotten into and in what position the film board would place me should I make a deal with the owners of the theatre building to take over the theatre and run it myself. Mr. Juan Barbera, owner of the building, got into some kind of a deal with another Mexican a few weeks ago and after a split up between them Mr. Barbera tried to run the theatre himself and was all this time trying to get me to make him a proposition to take the theatre over. I went into details with him to-day on a proposition and in going through some of his files found a letter from the Home State Film Co. asking for a deposit of $200.00 stateing you had written him in regard to it. Mr. Barbera stated he had no such letter from you and while he can't read or write English couldn't tel' me all the details of the mixup. I dont want to take over the theatre if I have to assume his contracts or any of his obligations, neither do I want to take it over if I have to put up a two hundred dollar deposit in order to buy pictures for it. I don't want to take it over unless I can buy pictures for both theatres and run them in either one I deem best either; please give me all the details in regard to this theatre and its standing with the film board should I decide to assume management and owner of the Concordia Theatre.

Yours truly,

R. M. SMITH,
Mission Theatre.

378 APRIL 6, 1927.

Mr. R. N. SMITH,
Mission Theatre, Mission, Texas.

DEAR MR. SMITH: This will acknowledge receipt of yours of the 3rd regarding the status of the Concordia Theatre and Juan B. Barbera. I believe the best explanation we can offer of this is to send you copy of our letter of March 28th to D. F. Strickland of your city. Since writing this letter we have heard that a fellow by the

name of Gonzales is endeavoring to represent himself as the owner of the theatre. We have had no end of trouble with this situation.

In the event you take over the theatre, will you please fill out and return the enclosed form as the purchaser or new owner?

We have no ruling which would require you to assume and fulfill Barbera's contracts which exist with Home State and F. B. O.; however, these are Mr. Barbera's obligation; and if these contracts are not properly taken care of these exchanges will no doubt take recourse against Mr. Barbera. Of course if you are going to be identified with Mr. Barbera in the ownership and management of the theatre, then some arrangement should be made to fulfill these obligations.

In the event you take the theatre, we urgently suggest that you have individual contracts made for the Concordia Theatre or a definite written agreement covering such service as you will play there.

Needless to say, you are established with this board and the various exchanges, and if you take the theatre outright, I know of no reason why your status should not be approved as the new owner. Please let us hear from you at once in the event you close the deal.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

379 MISSION, TEXAS, 4/7/27.

DALLAS FILM BOARD OF TRADE,
Dallas, Texas.

DEAR MR. DON DOUGLAS: Mr. Ed Blumenthal, salesman for F. B. O., was here to-day and upon examination of the contract which Mr. Valverde and Mortinez signed he decided that said contract was not good at all, as I explained to him that those gentlemen had nothing whatever to do with this Concordia Theatre any more.

Mr. Douglas, let me, please, give you the straight of this matter: Mr. M. C. Valverde was nothing but a partner of Mr. Juan B. Barbera, and Mr. Mortinez was acting as a local manager for Mr. Valverde; Mr. Valverde and Mr. Mortinez could not make a living out of this Concordia Theatre, so they just had to quit this theatre, they had to go, they skip'ed, and we don't know a thing about them any more. Mr. Juan B. Barbera is and has always been the legal owner of this theatre, and I, Jeses G. Gonzalez, have been working for Mr. Barbera in the capacity of his manager, and I have the authority from Mr. Barbera to buy films and sign contracts. We want to assume contracts with Home States and F. B. O., but will you please tell us how can we assume contracts when they don't send us the films? They have stop'ed serving us with films since March 27. Several days before this they send us warning that unles' we sent them a deposit of $200.00 they would suspend the film service to us. We could not afford to send them that amount and they kept their word; they did suspend*ed* the service; we asked them by letter to tell us what they want $200.00, they answered bask to us stating that

you Mr. Don Douglas would write us explaining why they wanted $200.00 for, but so far we have not heard from you with regard of that suspension or that $200.00; up to now we have been paying for the films they send us C. O. D. Just as soon as they get here, and we absolutely intend to keep on doing so in the future, Mr. Douglas, will you please arrange so that we start getting films immediately? We just got to get films, and get 'em the right way, for Mr. Barbera is absolutely willing to settle everything right manner. And about the matter of the Famous-Players-Lasky Corporation, San Antonio. It all happened this way, but please remember that Mr. Barbera is and has always been, so he tells me, willing to settle right, to pay anything that there is against him; why, he tells me that he hates to be in trouble for such a little amount of money, and if, after I explain you, you still think it is absolutely necessary to pay that amount, then just set your terms; he never completed, I mean he never showed, all the films of the Famous-Players contract. So he admits to show the rest of the pictures, to assume the Paramount contract for the pitcures that was left to show.

In 1925 Mr. Barbera opened a show in the town of Weslaco (the Liberty Theatre). When the salesman for Famous-Players came, Mr. Barbera bought several programs, to be shown in this theatre in Mission, formerly names the "La paz Theatre"; those programs were bought in with the understanding to show them in Mission and in Weslaco both, and Famour-Players started to send
380 films to Mission; Mr. Barbera showed the picture in Mission al'right, but it hap'enned that in the town of Weslaco the light plant of that town, for some reason or other, they could not give him light service for 7 days, and so you see, Mr. Barbera showed pictures here in Mission, but did not showed in Weslaco. The price rental for both towns was $15.00, or $7.50 in Mission and $7.50 in Weslaco; but, as I stated above, Mr. Barbera showed those pictures in Mission for 7 days and for 7 days he never showed in Weslaco, but right after he got thru with the showing of the pictures in Mission he sent them right back to the exchange. Mr. Barbera paid the $15.00 just the same for showing the pictures in Mission only, when he was sup'osed to show them in Weslaco also; he made the claim, that is, he wrote Paramout telling them of the fact that he only showed that picture Mission only, and Mr. Barbera tells me Paramount answered saying that they will give him back his money, that is $7.50 7 times, for the seven days that he did not showed in Weslaco; in other words, Mr. Barbera claims that Famous-Players, San Antonio, owes him $52.00, and, another thing, Mr. Barbera tells me also that Famous-Players, San Antonio, instructed him to send a film C. O. D. to Brownsville, Texas, for $10.00. Mr. Barbera believed that those $10.00 was as a payment on the $52.00 which Mr. Barbera is very sure that Famous Players owe him and he says that he still keeps the $10.00 and he will be only too glad to send back said $10.00 and to pay express charges on films that Mr. Barbera refused. But, Mr. Douglas, Mr. Barbera says he is not to blame if he refused to take

out of the express office some films, because he assures you that he sent word to Famous-Players, San Antonio, to stop sending films because he was forced to close both theatres, Mission and Weslaco, and mistakes of this kind has been the cause of all the misunderstanding, so tell me Mr. Barbera.

Mr. Douglas, every word I said in this letter is just what Mr. Barbera is telling me to tell you. Awaiting your prompt response,

I am yours truly,

J. G. GONZALEZ,
Mgr. Concordia Theatre.

381 APRIL 11, 1927.

CONCORDIA THEATRE,
Mission, Texas.

DEAR MR. GONZALEZ: We have yours of April 7th advising that you are going to take over the management of the Concordia Theatre and that you are willing to assume Mr. Barbera's contracts with Home State and F. B. O. The distributors, however, advise that they are not willing to agree to the assigning of their contracts to you unless you are willing to place a $200 deposit to guarantee the faithful performance of their contracts.

The reason we did not write Mr. Barbera more fully about this was because he referred us to his attorney, D. F. Strickland, of Mission, and under date of March 28 we wrote Mr. Strickland very fully regarding Mr. Barbera's trouble, and also sent a copy of our letter to Mr. R. N. Smith, of the Mission Theatre, and feel sure that one of these gentlemen can explain this thing so that you can understand it.

To be perfectly frank, we have had a great deal of trouble with Mr. Barbera's account, and we have made it very plain that distributors are not going to deal with him until he shows good faith by complying with the arbitration award of July 16, 1925, in favor of the Famous Players-Lasky Corporation, 506 Soledad St., San Antonio, Texas. We urgently suggest that Mr. Barbera comply with this award by sending Famous Players cashier's check for the amount of $105.84. When Mr. Barbera shows us that he wants to do what is right we will then be in a position to deal with you further.

In view of the very unsatisfactory relations which distributors have had with this theatre in the past and the further fact that you are merely leasing the theatre for an indefinite period, the credit committee has approved your status, recommending a $200 deposit on any new applications for service, and you do not have to assume any of Mr. Barbera's contracts unless you see fit. You may make contracts with any exchange you desire if you will secure them with a deposit to guarantee their faithful performance.

Yours very truly,

——— ———, *Secretary.*

DCD/L.

382 FAMOUS PLAYERS-LASKY CORPORATION;
PARAMOUNT PICTURES,
501–503 Soledad St., San Antonio, Texas,
January 27th, 1927.

Mr. DON C. DOUGLAS,
Dallas Film Board of Trade,
Dallas, Texas.

Re: La Paz Theatre, Mission

DEAR MR. DOUGLAS: We have just heard from our salesman, Mr. Vaughn, that the former operator of the La Paz Theatre at Mission is now operating a house under the name of the Concordia Theater.

Mr. Vaughn states that a Mr. J. Barbera owns the place and a Mr. Martin is connected with them. He further states that Mr. Barbera is the same gentleman who formerly owned and operated the La Paz Theater.

About a week ago we received a request by wire for a film from the Concordia Theater for their use the following day. We supplied the booking thinking that it might possibly be a new theater. Yesterday we received another similar wire and to which we replied, stating that we were unable to supply service at this time.

Attached is a copy of my letter of this date to the exhibitor.

Sincere y yours,

H. E. PICKETT,
Branch Manager.

HEP.
DLP.

383 JANUARY 28, 1927.

CONCORDIA THEATER,
Mission, Texas.

GENTLEMEN: We are enclosing a form to be filled out by the owners of the Concordia Theater. In the blank provided for the names of the owners please name all parties interested in the ownership of this theater.

It should be useless for us to repeat that if J. B. Barbera is connected with theater or any other that it will be necessary for him to comply with the award of the board of arbitration in favor of Famous Players in the amount of $105.84. In order to avoid any inconvenience, please let us hear from you fully; and if Mr. Barbera is connected with the theater it will be better to notify us fully.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

384 D. F. B. T., FEBRUARY 7, 1927.

Re Concordia, Mission, Famous Players. SA

Please note attached copy of a letter from M. C. Valverde regarding the status of J. B. Barbera.

I suppose if we keep after this fellow long enough we will either make him pay or wish he had.

The name of the theater having been changed and the owners indicated as Valverde and Martinez, I am quite certain that several exchanges have sold the account pictures; and it is doubtful in my mind if under the present ownership we could enforce the award against Barbera. My suggestion is that you have a salesman call on Barbera and try to impress upon him the necessity of taking care of this.

Yours very-truly,

———— ————, *Secretary.*

DCD/L.

385 MARCH 1, 1927.

CONCORDIA THEATER,
Mission, Texas.

GENTLEMEN: Several of the exchanges have called to our attention letters from Messrs. Valverde & Martinez advising that they are turning over to Juan Barbera, and, as we understand it, Barbera does not intend to assume and complete existing contracts.

In a letter which we received February 2nd from Mr. Valverde, he advised that Mr. Barbera leased the theater to Valverde and Martinez and that in lieu of rent he was to receive half the net profits. As we see the matter, this makes Barbera a partner in the business, and we should think that he is equally responsible for the fulfillment of the partnership contracts; and we urgently suggest that arrangements be made for Mr. Barbera to assume and complete existing contracts whether they are signed by Mr. Valverde or Mr. Martinez. If there are any contracts covering service for this theater signed by Juan Barbera, we can arrange to have them cancelled. If Mr. Barbera is taking full charge of the theater, it will be necessary that he fill out and return the enclosed form in order that his status may be established and to avoid any interruption in service. We do not belive exchanges will accept applications for service from Mr. Barbera until this report is received and his status established; furthermore, if Mr. Barbera is going to operate the theater in his name, we again call his attention to the fact that it will be necessary for him to comply with the award of the board of arbitration of July 16, 1925, directing that he remit the Famous Players-Lasky Corporation, San Antonio, $105.84.

In returning the enclosed form, please list the names of the exchanges who have contracts with the theater, and advise specifi-

cally whether or not all or any part of them are being assumed. Please let us have this information by return mail.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

386 APRIL 25, 1927.

GEM THEATRE,
Valera, Texas.

DEAR MR. FOREHAND: This will acknowledge receipt of your question'aire as the new owner of the Gem Theatre. This report was referred to the credit committee last Saturday, and they have approved your status as the new owner of the theatre, recommending a $50 deposit on any new applications for service, this deposit to guarantee the faithful performance of any contracts you make and to be refunded to you thereafter.

It is not the purpose of this recommendation to place any hardship on you, but we are frank to state that this theatre in the past has not been entirely satisfactory; and as you have had no previous experience in the show business, the committee felt that this security deposit was justified until you became established.

Mrs. Speers had a contract with Universal which we have mentioned in our previous letter. Mrs. Spears, of course, is legally responsible for this contract, but according to the assignment clause the may assign the contract to you and thereby relieve herself of the obligation. If you desire to assume this contract, please request the distributor to send assignment for signature. According to the terms of the contract, this contract may be assigned without the distributor's consent and without any security. Of course, if this is not done, the distributor will very likely take recourse against Mrs. Spears.

We can assure you that after you have operated the theatre for a few months, and if the report is favorable, the security deposit referred to above will be eliminated.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

387 APRIL 29, 1927.

PALACE THEATER,
Eldorado, Texas.

DEAR MR. BOWEN: We referred your report to the credit committee to-day, and they have approved your status recommending a $100 deposit on any new applications for service, pending a further report from you.

It is our understanding that you bought the theater from Mr. Jackson and that contracts were not being assumed and fulfilled by you. We are informed that you have assumed all contracts except Universal and FBO contracts. Please advise us if you intend to

assume these contracts or if it is Mr. Jackson's intention to satisfy his Eldorado contracts by taking service in one of his other towns.

Just as soon as this matter is more fully understood I am sure your credit status will be approved without restrictions.

Wishing you success and hoping you will let us hear from you further, I am,

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

388 MAY 11, 1927.

PALACE THEATER,
Eldorado, Texas.

DEAR MR. BOWEN: This will acknowledge receipt of your letter of the 4th, giving further information about the contract which Mr. Jackson had for the theater. So far as I am able to ascertain, all contracts have now been satisfied; that is, I am advised by FBO that Mr. Jackson has made satisfactory arrangement with them to effect his Eldorado contracts, and the Universal exchange advises that you are using their service right along; and, as I understand from your last letter, you intend to assume and fulfill the Universal contract which covers fifty features and twenty-eight comedies. The only other contract in doubt at this time is the Home State contract, covering four features at a total rental of $34. I am sure this small contract can be satisfactorily disposed of, and at the next meeting of the credit committee I am going to recommend that the previous security deposit recommendation be retracted.

Thanking you for your cooperation and wishing you every success, I am,

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

389 MAY 10, 1926.

Mr. JOHN P. MORGAN,
City Auditorium, Houston, Texas.

DEAR MR. MORGAN: We have yours of May 7th regarding the Metro claim for refusal of the Unholy Three, and this is the first direct information we have had that you have disposed of the theatre to Mr. Rocha.

We would infer from your letter that Mr. Rocha took over the theatre with the understanding that he was to carry out the film contracts. We trust this is the case, as you understand you are legally responsible for those contracts, even though you have disposed of your theatre. Will you please give us definite information to this effect; also advise if you have interest whatever in the at this time.

Mr. Rocha is going to find himself in a serious predicament unless he shows the credit committee of this board the courtesy of filling

out one of the enclosed forms covering this reported change in ownership. The theater is now in default of the Metro and Universal contracts, which were made by you; and if the awards of the board of arbitration and the contracts are not satisfied, service no doubt will be suspended. And until such time as definite proof is received that Mr. Rocha is the owner of the theater, there is nothing for the members to do but consider that you are the owner and to proceed under contracts which you made. If you can prevail upon Mr. Rocha to fill out and return the enclosed form which has been sent him on two other occasions, it will be greatly appreciated and will facilitate in disposition of this matter.

Yours truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

390 JUNE 29, 1926.

SAN JOSE THEATER,
2213 Congress Ave., Houston, Texas.

GENTLEMEN: The Specialty Film Company advises us that they have received a telegram from you inquiring about service for the San Jose Theater.

According to our records, J. P. Morgan is the owner of this theater; and if Mr. Morgan is still the owner of the theater, it will be necessary that he comply with two awards of the board of arbitration against him for default in his Metro and Universal contracts. Mr. Morgan advised us at one time that the theater had been sold by him to one Ramon Rocha, but we were never able to get any satisfactory proof from Mr. Rocha that he was the legal owner of the theater.

If the San Jose or Hidalgo Theater has changed ownership, will the purchaser or new owner please fill out and return by first mail the enclosed questionaire in order that his status may be established and to avoid interruption in film service? We do not believe the members of this board, under the circumstances, will be willing to make contracts with the theater until something definite is known regarding the present owner.

At the time Mr. Morgan operated the theater he had contracts with Universal, FBO, and Metro, and we desire to know if in taking the theater the purchaser agreed to assume and fulfill these contracts.

We trust that you will let us hear from you by first mail in order that this situation might be cleared up. Assuring the new owners that we are willing to cooperate with them and wishing them success, we are

Yours very truly,

DALLAS FILM BOARD OF TRADE.
DON C. DOUGLAS, *Secretary.*

DCD/L.

391 MAY 11, 1927.

PALACE THEATRE,
Daingerfield, Texas.

DEAR MISS HARRIS: This will acknowledge receipt of your question'aire which you signed as the purchaser or the new owner of the Pal'ce Theatre; however, you failed to advise whether or not film contracts made by the former owners are to be assigned and fulfilled by you. Newsom & White are, of course, legally responsible for payment under these contracts even though they have disposed of the theatre, and we trust that provision has been made for their assumption and fulfillment.

The only contracts of which we have any knowledge just at this time are as follows:

Fox, 18	$152.50
Universal, 36 news	48.00
2 serials	60.00
15 feat	112.50
First National, 37 feat	285.00

Please advise us in this respect in order that the theatre holding these contract' will know what recourse to take. If you desire to assume these contracts, we shall be glad to prorate the dates, as we understand you can use only two pictures a week until fall. We shall be glad to assist you in any way possible and wish you every success in your new undertaking.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

392 JULY 5, 1927.

PALACE THEATER,
Daingerfield, Texas.

GENTLEMEN: This will acknowledge receipt of letter of June 29th from Mr. Walker advising that the Palace Theater is closed and is now owned by S. G. Newsom, jr., who will reopen it in September. The credit committee of the board has approved Mr. Newsom's status as the new owner, recommending a $500 deposit on any new applications for service, this to remain until such time as Mr. Newsom is established and to guarantee faithful performance of existing contracts.

Mr. Newsom formerly operated the theater and is legally responsible for contracts with the following exchanges: First National, Fox, and Universal. When the theater reopens, we urgently suggest that this service be reinstated.

In the meantime please advise us if Mr. Walker is going to be authorized to sign contracts as the agent for Mr. Newsome.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

393 AUGUST 22, 1927.

Mr. R. D. WRIGHT,
Southland Theatre, Southland, Texas.

DEAR MR. WRIGHT: Your credit report was referred to the credit committee of the board and they have approved your status as the new owner or lessee of the Southland Theatre, recommending a $50 deposit on new applications for service to guarantee their faithful performance and to be returned to you thereafter or sooner in the event you establish yourself with the exchange members of this board.

The report which you sent us states that you have leased the theatre until January 1st; it appears that you have had no previous experience in the show business and you give no references. Furthermore, you have failed to advise if your lease agreement made any provision for the assumption and fulfillment of Mr. Furr's contracts with Paramount, Universal, and United Artists. These are Mr. Furr's obligations, and unless some provision has been made for their assignment to you the exchanges will no doubt take recourse against Mr. Furr, since he is legally responsible for payment under his contracts even though he has disposed of the theatre.

Kindly let us hear from you further and also have Mr. Furr get in touch with us.

Yours very truly,

——— ———, *Secretary.*

394 AUGUST 5, 1927.

Mr. FARMER JONES,
Voga Theatre, Voga, Texas.

DEAR MR. JONES: Your report as the purchaser or new owner of the Voga Theatre has been received and referred to the credit committee of the board. I am pleased to say that they have approved your status as the purchaser or new owner recommending a minimum deposit of $50 upon the signing of any new applications for service, this deposit to guarantee the faithful performance of the contract and to be refunded to you thereafter or sooner if your dealings with the various exchanges prove to be satisfactory.

Mr. Yates had an uncompleted contract with Liberty-Specialty Film Distributing Corporation covering 48 features and 48 two-reel comedies. Mr. Yates is, of course, legally responsible for payment under these contracts even though he has disposed of the theatre, and we were very hopeful that he would assign the contracts to you and relieve himself of this obligation.

As we understand it now, the theatre is closed. Please advise us when you intend to reopen and if it is your intention to assume and fulfill Mr. Yates uncompleted contracts.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

395 D. F. B. T., AUGUST 8, 1927.

Re Voga Voga. Liberty-Specialty

The purchaser of the above, Farmer Jones, was approved on credit report #90 recommending a $50 deposit. You appear to be the only creditor of the former owner, G. H. Yates. Mr. Yates is in California, and the theatre is closed for the present. Would suggest that you send an assignment covering the unplayed portion of your contract, and possibly it may be assumed.

Yours very truly,

DCD/L. ——— ———, *Secretary.*

396 AUGUST 17, 1927.

Mr. JOHN A. YATES,
Monahans, Texas.

DEAR MR. YATES: This will acknowledge your notation on our letter of the 9th to which you attach copy of bill of sale dated July 20th conveying the Palace Theatre equipment to S. W. Estes. It does not appear, however, that this bill of sale was ever placed of record. Will kindly advise us if this bill of sale has been filed with your county clerk for record.

I am going to be perfectly frank with you in stating that information comes to us that you are still identified with the theatre, that you are still operating in the same building, that Mr. Estes is employed by you, and that he is a relative of yours.

I wish you would advise us in writing with a definite answer to each of the above reports.

I am going to say, furthermore, that members of this board look with great disfavor upon the transfer of theatres between relatives where contracts are not assumed. The report comes to us that this is a fraudulent transfer for the purpose of evading a contract, and it is to your interest to confirm or deny the report.

As you are aware, Paramount has already secured an award sustaining their contract against you and the Palace Theatre; and if you are still identified with the theatre, you will be expected to comply with this award by completing the contract; furthermore, if Mr. Estes is not the legal owner of the Palace Theatre, then it would be construed that any contracts he signed were made for your account and these contracts as well would be enforced against you.

Please give us a reply by return mail in the enclosed stamped envelope.

Respectfully,

DCD/L. DON C. DOUGLAS, *Secretary.*

397 MARCH 1, 1928.

RIGGS THEATRE,
Monahans, Texas.

GENTLEMEN: The Home State Film Company phones us yesterday that they had received a wire from you stating that you had

ten pictures under contract with Enterprise and that you desire to start them. The Enterprise contract was signed by John A. Yates, and the telegram is a virtual admission that Mr. Yates is still the owner of the Riggs Theatre; furthermore it is our information that Mr. Yates is on the grounds operating the theatre and that his brother-in-law, S. W. Estes, has no connection with it.

If Mr. Yates is operating the theatre, we again urgently suggest that he make some arrangement to satisfy the Paramount contract and award against him. Please advise us on or before March 7th in this respect.

Respectfully,

DCD/L. DON C. DOUGLAS, *Secretary.*

398 AUGUST 23, 1927.

Mr. W. J. RUTLEDGE,
Pleasanton, Tex.

DEAR SIR: The credit committee has passed on your question'aire as the new lessee of the Ples-Tex Theatre, recommending a $200 deposit on new applications for service, this to guarantee their faithful performance and to be returned thereafter or sooner when you have established yourself with the members of this board. We notice that you have had no previous experience in the show business, and we do not want you to think that this action is intended to place any handicap on you. As soon as you have become established, there is no question but what this recommendation will be retracted.

We notice you are assuming Universal and Paramount contracts made by Mr. Vance, but that you are not assuming his contracts with F. B. O. and First National. These are, of course, Vance's obligations, and in the event they are not assigned to you, the exchanges no doubt will take recourse against him, since his disposing of the theatre does not relieve him of these obligations. Mr. Vance, however, states that salesmen agreed to cancel contracts in the event of sale or lease of the theatre. F. B. P. salesman denies this, and as yet we have not heard from First National. We desire to caution you to have all forms of agreements written in the face of your contracts.

Yours very truly,

——— ———, *Secretary.*

399 PALACE THEATRE,
Kenedy, Texas, August 26, 1927.

Mr. DON C. DOUGLAS,
Dallas Film Board of Trade,
Dallas, Texas.

DEAR MR. DOUGLAS: This will acknowledge receipt of your letter of the 23rd instant in which you state the credit committee demand of me $200.00 deposit.

I have discussed this matter with Mr. Payne of Universal, Mr. Pickett of Famous, and Mr. McNeese of Kenedy. They all seem to

be of the opinion that possibly the credit committee has not been properly informed regarding my ability to care for any obligation I might make. I do not recall having notified you, but my father, who is a rancher, is associated with me, and his name appears on the lease. You can readily find out from Kenedy banks as to his financial responsibility.

With reference to assuming of contracts from Universal and Famous, in so doing certain concessions were granted me. The representative of F. B. O. and First National have not yet seen me, and no doubt when they do satisfactory arrangements may be made.

I am not what may be termed an experienced showman but have a high-school education and have worked for the past year in all capacities for Mr. McNeese—from operating machines, bill posting, and advertising to cashier. I am convinced that I can put over this theatre in a small way if given a halfway break. It seems to me that the exchanges would prefer a show running Pleasanton with some revenue from same rather than have it closed up entirely, and that I understand from outside sources was the intention of Mr. Vance before my taking over the Ples-Tex.

With the above explanation, I would be glad to have a favorable report from you on the rehearing of my case before the credit committee of the Dallas Film Board of Trade.

Yours very truly,

WILL J. RUTLEDGE,
Ples-Tex Theatre, Pleasanton, Tex.

400 NOVEMBER 14, 1927.

Miss SUSIE GRAY,
Rialto Theatre,
Claude, Texas.

DEAR MISS GRAY: We regret that we have not had any reply to our letter of November 2nd requesting further information for the benefit of the credit committee before passing upon your status as the new operator of the Rialto Theatre.

In the report which you sent us you failed to state whether you owned or leased the theatre. You stated that you had no previous experience in the theatre business and no declaration was made as to what disposition was to be made of Mr. Wise's contracts. The report has come to us that you are a sister-in-law of Mr. Wise, and we desire to say frankly that members of this board look with disfavor upon the transfer of theatres between relatives without provision being made for the assumption of contracts; nevertheless, the credit committee has approved your status recommending a $100 deposit on any new applications for service until such time as you become established with the exchanges.

Mr. Wise has uncompleted contracts with First National, PDC, Pathe, Fox, and United Artists, all of Dallas; also contracts with Educational and Vitagraph of Oklahoma City. It is Mr. Wise's

privilege, by virtue of his contracts, to assign them to you if he desires; otherwise exchanges may take recourse against Mr. Wise.

If you can give us any further information, we shall be very glad to receive it.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

401

DECEMBER 5, 1927.

OKLAHOMA CITY FILM BOARD OF TRADE,
623 Security Bldg., Oklahoma City, Okla.

DEAR ZEARS: The attached to Claude is self-explanatory.

If all the reports about this lady are true, she certainly has a checkered career. Just as soon as we are sure that this Miss Gray is the same as Susie Haag Gray, formerly of McLean, we will likewise carry her name on the list of exhibitors who are in default of arbitration awards.

As we have previously advised your office, Miss Gray was approved by the credit committee of this board recommending a $100 deposit on any new applications for service. I do not know where they are getting service, as no contracts were assumed

Regarding the Liberty at Amarillo, this theatre will change hands January 1st, the purchaser's name being L. Jacobson and the manager's name M. Mendel. We have had a question'aire on this situation for some time but have refrained from referring it to the credit committee, awaiting more definite advice from the purchaser as to his disposition toward contracts. I believe every one is satisfied now, and the report will be acted upon at the next meeting of the credit committee Friday. In the meantime please advise us if any of your members have any outstanding contracts with the former owner, Sam Zukav and whether or not they are being properly taken care of.

It is our understanding that this theatre has always been owned by a partnership consisting of Sam Zukav and L. Jacobson; hence, if this is true, contracts should not be avoided.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

402

DECEMBER 7, 1927.

RIALTO THEATRE,
Claude, Texas.

GENTLEMEN: Since writing you December 5th we are not advised by the Oklahoma board that one Joe Mitchell has signed an application for service with Universal, Oklahoma City, for the Rialto, Claude. To be perfectly frank with you, there is little use in resorting to all these subterfuges. We have already been informed that

Miss Gray is Mr. Wise's sister-in-law; and if Mr. Mitchell or any one else desires to be established as the new owner of the Rialto Theatre we respectfully request that they fill out and return the attached form to the Dallas Film Board of Trade.

Exchanges are still of the opinion that Mr. Wise's contracts with First National, PDC, Pathe, Fox, and United Artists should be assumed and fulfilled, as well as contracts with Educational and Vitagraph, Oklahoma City. It is quite possible that legal action will be taken against Mr. Wise unless something is done about these contracts.

The exchanges would be of a disposition to assist the management of this theatre, but they are not going to do anything as long as you persist in presenting new owners of the theatre every week.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

403 DECEMBER 16, 1927.

Mr. JOE MITCHELL,
Rialto Theatre, Claude, Texas.

DEAR MR. MITCHELL: The question'aire signed by Mr. Snodgrass as the purchaser or new owner of the Rialto Theatre at Clande was referred to the credit committee at their meeting to-day, and I am pleased to say that they have approved your status recommending a minimum security deposit of $50 to be placed with the exchange with whom you sign applications for service, this deposit to guarantee the faithful performance of the contract and to be returned to you thereafter. This is not intended to place any handicap in your way, but we notice that neither you nor Mr. Snodgrass has had any previous experience in the show business, and we are frank to say that the theatre at Claude has caused exchanges a great of trouble and expense. As soon as you become established with the Dallas and Oklahoma City exchanges, there is no reason why the credit committee should not see fit to retract this recommendation.

We notice that you are not assuming any of Mr. Wise's contracts, and this, of course, is your prerogative, as they are not your legal obligations. It is very unfortunate that Mr. Wise did not inform you of these contracts, as they undoubtedly exist and he is responsible for them.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

404 ENTERPRISE FILM CORPORATION

308 South Harwood St., Dallas, Texas

Mr. DON C. DOUGLAS,
Sec'y Dallas Film Board of Trade,
2009½ 2 Jackson Street, Dallas, Texas.

DEAR MR. DOUGLAS: We have been advised by Mr. J. P. Parnell, of the Majestic Theatre, Nacogdoches, Texas, that he has sold his theatre and wishes us to cancel all contracts.

We are attaching hereto a copy of contracts which we have with Mr. Parnell, and it is our desire that the new owner assumes said contracts.

We are also mailing Mr. Parnell transfer of contract form for his signature and also for the signature of the new owners.

Yours very truly,

ENTERPRISE FILM CORPORATION OF TEXAS,
E. PAYNE, *Booker.*

EP–MC.
(Copy.)

405 DECEMBER 14, 1927.

MAJESTIC THEATRE, COLORED,
Nacogdoches, Texas.

GENTLEMEN: We understand that Alex Yarborough has transferred the Majestic Theatre to Ines Jones, and as the new operator of the theatre, please have Ines Jones fill out and return the enclosed form in order that her status may be established with the exchange and to avoid any interruption in service. Exchanges will not accept applications from Ines Jones for any service until this report is received and passed upon by the credit committee of this board. We understand that Alex Yarborough had contracts with Universal and Vitagraph.

Under question #10 please advise whether or not these contracts are going to be assumed and fulfilled by Ines Jones. Mr. Parnell, who owned the theatre before Yarborough, also had a contract with Enterprise, and we should like to know if this contract is going to be assumed.

Please let us have the report by return mail.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD–L.
(Copy.)

406 DECEMBER 20, 1927.

Mr. INES JONES,
Shawnee Theatre, Shawnee Street,
Nacogdoches, Texas.

DEAR JONES: We have your report as the new owner of the Shawnee Theatre, in which you indicate that you will assume and complete the former owner's contracts with Warner Brothers and Universal, and we understand that you have also signed a new contract with Universal.

Please advise us if you will assume and fulfill the Enterprise contract, covering service per the attached list. This contract was signed by J. P. Parnell.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD–L.
(Copy.)

407 DECEMBER 19, 1927.

Special delivery

QUEEN THEATRE,
Orangefield, Texas.

GENTLEMEN: This will acknowledge receipt of your report as the new owner of the Queen Theatre, formerly known as the Thelma.

The report indicates Mrs. B. F. White as the owner and G. W. Amerine as manager. Please advise us if Mr. Amerine is authorized to sign contracts.

In your report you indicate that Mr. Lance's uncompleted contracts with Paramount, Liberty Specialty, and Metro are to be assumed and fulfilled by the new owner. Within the next few days we will be able to advise you the exact number of pictures evidenced by these contracts.

Mr. Lance also had two contracts with New Orleans exchanges as follows:

Educational, 21 two-reel comedies, totalling $63.00.

Pathe, 7 features and 3 comedies, totalling $48.00.

We are informed by the New Orleans Film Board of Trade that you have already certified to Pathe that their contract would be assumed, and we should like a commitment regarding the Educational contract.

Please let us have this information by return mail, as the next meeting of the credit committee will be Friday, and at that time the report will be passed upon by the committee and you will be properly advised of your status.

You have applications pending with Paramount and Fox; however. we understand you have withdrawn the Paramount applica-

tions. Please advise us your wishes with respect to the Fox application.

Awaiting an early reply and wishing you success, I am

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

408 DECEMBER 23, 1927.

QUEEN THEATRE,
Orangefield, Texas.

GENTLEMEN: The credit committee has approved the status of Mrs. B. F. White as the purchaser or new owner of the Queen Theatre, recommending a $100 deposit on any new applications for service.

In the question'aire which we received it is certified that Mr. Lance's uncompleted contracts with Paramount, Liberty, Specialty, and Metro are to be assumed; however, we have received no reply to our letter of December 19th advising what disposition will be made of the Educational and Pathe contracts at New Orleans.

We have just received letter of December 22nd signed by G. W. Amerine, manager, advising that the theatre will close December 27th on account of unfavorable conditions and that the theatre will very likely be moved to another location. In view of this, we presume you do not care to have your pending applications with Fox and Paramount approved, as you would have no use for the service if your theatre is to be discontinued. At such time as you become definitely located and established please advise us.

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

409 JANUARY 5, 1928.

Mr. C. G. MERONEY,
Dunbar Theatre, colored, Austin, Texas.

DEAR MR. MERONEY: It is absolutely imperative that exchanges have more definite information regarding your theatre before they are going to accept applications for service.

As we understand it, you operate in the building formerly known as the Lyric, and Lawson, who was formerly owner of the Lyric Theatre, is your manager. We also understand that the Lyric has been dismantled. Please advise what is meant by this and what equipment was put in the old Lyric building.

This and other information can best be given by your filling out the attached report and returning to us at your first convenience. Also please advise if Lawson is authorized to make contracts for your account.

First National advises having an application for service signed by Lawson as manager. If Lawson is properly authorized by you, he

should sign contracts with your name by Lawson. Please let us have definite information in this respect.

Wishing you success, I am

Yours very truly,

DON C. DOUGLAS, *Secretary.*

DCD/L.

410 JANUARY 14, 1928.

DUNBAR THEATRE, COLORED,
419 East 6th St., Austin, Texas.

DEAR LAWTON: The credit committee of the board has passed upon the credit report filled out by C. G. Meroney as the purchaser or new owner of the Dunbar Theatre.

We regret very much that you did not give all the information requested in our letter of January 5th, as the credit committee is still unaware of the true status of this situation. In any event, the uncompleted contracts that Givens and Lawton have are not the obligations of Meroney, but until the situation is better understood and established the credit committee has approved the status of Meroney of the Dunbar Theatre recommending a $100 security deposit on any new applications for service, this deposit to guarantee the faithful performance of the contract and to be returned thereafter or at such time as the purchaser becomes established; however, he is unknown to Dallas and San Antonio exchanges at this time.

Wishing the new owner success, I am

Very truly yours,

DON C. DOUGLAS, *Secretary.*

DCD/L.

411 FEBRUARY 27, 1928.

PETERSBURG THEATRE,
Petersburg, Texas.

GENTLEMEN: This will acknowledge receipt of your questionnaire as the purchaser or new owner of the Linn Theatre.

We first got the report of this transfer the latter part of January, and we wrote Mr. Hildreth under date of January 30th inquiring at that time if the following contracts left by Mr. Linn were to be assumed: Fox, Home State, First National. These contracts are, of course, Mr. Linn's obligation, and he is responsible for them even though he has disposed of the theatre; and he may easily dispose of these contracts by assigning them to you; otherwise the exchanges may take recourse against Mr. Linn.

The report certifies that you took the theatre over on February 15th.

We are pleased to advise that the credit committee has approved your status as the purchaser or new owner recommending the minimum deposit of $50 to be placed with the individual exchanges upon the signing of any new applications for service, this deposit to

guarantee the faithful performance of contracts and to be returned to you immediately thereafter. As soon as you have become established as an exhibitor I see no reason why the credit committee should not retract this recommendation.

Wishing you success, I am

Yours very truly,

DCD/L. DON C. DOUGLAS, *Secretary.*

412 MARCH 24, 1928.

Mr. A. F. URBANEC,

Majestic Theatre, East Bernard, Texas.

DEAR MR. URBANEC: We are pleased to advise that the credit committee has approved your status as the new lessee of the Majestic Theatre, recommending the minimum security deposit of $50 on any new applications for service. This deposit to be placed with the individual exchanges to guarantee the faithful performance of the contract and to be returned to you thereafter or sooner when you become established with the exchanges.

Mr. Cole has uncompleted contracts with Fox, Metro, and Paramount, San Antonio, and, as previously advised, it was out understanding from Mr. Cole that you were to complete their contract, but in your question'aire you state you were to complete their contracts. In this case, of course, Mr. Cole is being held legally responsible for the unplayed portion of the contracts unless he can prevail on you to assume and fulfill them.

Wishing you success, I am.

Yours very truly,

DCD/L. DON C. DOUGLAS, *Secretary*

413 *Government Exhibit 18*

Volume II

UNITED STATES v. FIRST NATIONAL PICTURES, INC. ET AL.

CREDIT COMMITTEE CASE, OMAHA FILM BOARD OF TRADE

EXHIBITS

(Mr. Watzman's report of May 14, 1928)

414 FAMOUS PLAYERS-LASKY CORPORATION,

PARAMOUNT PICTURES,

1610–1612 Davenport St., Omaha, Nebraska, April 8, 1926.

Miss FOLEY,

Secy. Omaha Film Board of Trade, Omaha, Nebr.

DEAR MISS FOLEY: This is to advise you that I have today cancelled the Franklin Theatre contracts, signed by Mr. Melcher, as demanded of me by the credit committee, owing to the fact that

through misunderstanding these contracts had not been previously rejected.

I trust this clears the matter.

Yours very truly,

(Signed) C. F. ROSE, *Br. Mgr.*

C. F. R. *M. G.
Inc.

Board 4/12, violation No. 1
Exhibit # 196. PW. 5/14/28.

415 APRIL 28, 1926.

Miss M. BENJAMIN,
Des Moines Film Board of Trade, 210 Iowa Building, Des Moines, Iowa.

DEAR MISS BENJAMIN: I have your letter of April 26th which I took up with the credit committee immediately upon its receipt; and in view of the fact that your board has taken it upon itself to remove this exhibitor's name from the credit information list it will certainly do no good for us to leave it on when the town has been opened for the Des Moines exchanges.

There is an understanding between the credit committees in each of the different boards that they are not to conflict with one another's reports; in other words, you may eliminate an exhibitor from the credit information list as far as your board is concerned at any time you desire, but you do not have the authority to eliminate that town in so far as this board is concerned and as long as we see fit to keep it on the list you should do so.

I am removing this Casey, Iowa, from the credit information list so that the Omaha exchanges who serve in the Des Moines territory will have an even break. This will be taken up at the next credit committee meeting and they will undoubtedly ask for an explanation of your procedure in this particular case.

Very truly yours,

OMAHA FILM BOARD OF TRADE,
By ——— ———, *Secretary.*

CF: FE.
(Exhibit 225. PW. 5/14/28.)

416 MAY 1, 1926.

CREDIT COMMITTEE, DES MOINES FILM BOARD OF TRADE,
210 Iowa Bldg., Des Moines, Iowa.

GENTLEMEN: With reference to Miss Foley's letter of April 28th in the matter of Casey, Iowa, this has been taken up at our credit committee meeting to-day, and we have removed this exhibitor's name from the credit-information list.

There was nothing else for us to do, in view of the fact that your board eliminated it. It certainly would not do this board any good to keep it on the list when it was off at Des Moines.

What we want to know is if you are going to continue this practice of establishing an exhibitor's credit without this board's approval. Every other board that we interlap with will hold an exhibitor on the list until we see fit to establish his credit. We believe if you do not want to do this that New York will back us up in our stand, and we intend to take it up with them immediately, unless we have advice from you that you will work along these lines.

Please let us hear from you about this.

Yours very truly,

CREDIT COMMITTEE,
——— ———, *Chairman.*

(Exhibit 226. P. W. 5/14/28.)

417 SEPTEMBER 11, 1926.

Miss M. BENJAMIN,
Des Moines Film Board of Trade, Des Moines, Iowa.

DEAR MISS BENJAMIN: Will you kindly answer my letter of August 20th regarding Pomeroy, Iowa, Mr. Becker being served by Paramount & Universal.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
By ——— ———, *Secretary.*

CF MS.
Exb. 155. PW. 5-14-28

418 Office of secretary, Mary Benjamin. Phone, Market 2051

DES MOINES FILM BOARD OF TRADE,
519 Iowa Bldg., Des Moines, Iowa, Sept. 14, 1926.

Miss CLARE FOLEY,
Omaha Film Board of Trade, Omaha, Nebr.

DEAR MISS FOLEY: Relative Pomeroy, Iowa, regarding Paramount and Universal serving Mr. Becker, beg to state that the situation was as follows:

Universal did not serve Mr. Becker, but did serve Mr. Robertson on a C. C. Becker contract, which was within their rights. Mr. Robertson intended to assume Universal contract if he had kept the theatre.

Paramount took a new contract and served a couple of pictures on it, and the board made them reject the contract, as they had no right to take same. In fact the contract was never approved.

However, Mr. Robertson has given up the theatre, as he stated he would not assume any of other contracts and wanted Paramount pictures—this the board would not adhere too. The owner of the building was down here the other day and stated that he was going to lease it to two exhibitors who had run the theatre sometime back

and that he was sure that he could get them to assume at least part of the contracts—that is, part of each exchange's contract. Our board is willing for this to be done, due to the fact that the lease was taken away from Stietz and Becker.

Trusting that I have given you the desired information, I am

Yours very truly,

DES MOINES FILM BOARD OF TRADE.
M. BENJAMIN, *Secretary.*

MB.
Exb. 156. PW. 5/14/28.

419 SEPTEMBER 22, 1926.

Miss M. BENJAMIN,
Des Moines Film B. of T., 210 Iowa Bldg., Des Moines, Iowa.

DEAR MISS BENJAMIN: Attached hereto is a service report covering contracts which the Fox Exchange holds with Mr. C. C. Becker, Strand Theatre, Pomeroy, Iowa. This account has been transferred to the Des Moines office of Fox.

As far as the Omaha board is concerned the credit of this theatre is O. K., as it is not served by any Omaha exchange.

Will keep on the list, however, until advised by you to eliminate.

Yours truly,

CREDIT COMMITTEE,
By ——— ———, *Secretary.*

CF: GH.
Exb. 157. PW. 5/14/28.

420 RAWLEY MYERS DRUG COMPANY,
Falls City, Nebr., March 1, 1927.

OMAHA FILM BOARD OF TRADE,
Film Exchange Building, Omaha, Nebr.

DEAR MADAM: To-day I have at hand a letter from the Fontenelle Feature Film Co. saying that they have under contract 15 features for this theatre. According to our conversation in the office the other day I understood only five companies have contracts under this house—Producers, Pathe, Columbia, Enterprise, and United Artists.

Think possibly there is a mistake some place, and I wish you would advise me at once on this matter, whether I am compelled to take these contracts over or not.

Thanking you for your trouble, I am,

Yours very truly,

G. L. KING,
Mgr. Gehling Theatre.

Exhibit #258. PW. 5/14/28.

421 CC OK 3/18, MARCH 2ND, 1927.

Mr. G. L. KING,
Gehling Theatre, Falls City, Nebr.

DEAR MR. KING: With reference to your letter of March 1st please be advised that the Fontenelle Feature Film Company is not a member of this board. Therefore, we do not have a record of their contracts and do not take them into consideration.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

CF:RF.
Exhibit #259. PW. 5/14/28.

422 JULY 7TH, 1927.

Miss M. BENJAMIN,
Secretary Des Moines Film Board of Trade,
Des Moines, Ia.

DEAR MISS BENJAMIN: I have been informed that the Des Moines Film Board of Trade has established credit for Harry Frankel, Strand Theatre, Boone, Iowa, and that F. B. O., Pathe, and Universal have already sold this exhibitor, in spite of the fact that up until today you have not been notified that credit was O. K. at Omaha.

Will you kindly give us an explanation of this immediately?

Yours very truly,

OMAHA FILM BOARD OF TRADE.
———— ————, *Secretary.*

CF:RF.
Exb. 168. PW. 5/14/28.

423 DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building,
Des Moines, Iowa, July 19, 1972.

Office of Secretary, Mary Benjamin. Phone, Market 2051.

MISS CLARE FOLEY,
Secretary Omaha Film Board of Trade, Omaha, Nebraska.

DEAR MISS FOLEY: Answering your letter of July 7, 1927, with reference to the credit of Harry Frankel, Strand Theatre, Boone, Ia., please be advised that F. B. O., Pathe, and Universal sold this exhibitor only product to the extent of their contracts with the old owner.

This I am advised is the understanding in these boards, but if it is not the practice I shall appreciate your so informing me.

Sincerely yours,

AUDREY C. LITTELL, *Secretary.*

Exhibit #169. PW. 5/14/28.

424 JULY 22ND, 1927.

Miss AUDREY C. LITTELL,
Secretary, Des Moines Film Board of Trade,
Des Moines, Iowa.

DEAR MISS LITTELL: This will acknowledge receipt of your letter of July 19th explaining transaction at Boone, Iowa.

Your understanding of the practice in this territory is correct. Exchanges are allowed to contract with the new owner to the extent of their contracts with the old owner.

Yours very truly,

OMAHA FILM BOARD OF TRADE.
———— ————, *Secretary.*

CF: RF.
Exhibit No. 170. P. W. 5/14/28.

425 MARCH 4TH, 1927.

Mr. MORSE SMITH,
Hipp Theatre, Sioux City, Ia.

DEAR MR. SMITH: We are informed that you used the Producer's picture Last Frontier on December 12–14. This picture was shipped to you from Yankton, South Dakota, and, therefore, Producers were unable to attach a C. O. D. for the rental. Up to this date you have not paid for the picture and have made no effort whatever to settle for it, so we have reason to question your credit standing.

Therefore we are attaching a question'aire with the request that you sign, fill in, and return. Also give explanation as to why you have not paid for this picture.

Yours very truly,

CREDIT COMMITTEE.
———— ————, *Secretary.*

CF: RF.
CC: Producers.
Exhibit #254. PW. 5/14/28.

426 MARCH 19TH, 1927.

Mr. MORRIS SMITH,
Hipp Theatre, Sioux City, Ia.

DEAR MR. SMITH: On March 4th we sent you a question'aire asking that you kindly sign, fill in, and return same within five days.

This you have not done, and, thinking possibly you misplaced it, we are enclosing another with the request that you give this your immediate attention. This is a very important matter, and I am sure you will give us your cooperation by returning this form immediately.

Yours very truly,

CREDIT COMMITTEE.
———— ————, *Secretary.*

CF: RF.
Exhibit #255. PW. 5/14/28.

427 *Service report data*

Sioux City, Ia. (Town & State) Hipp & Tivoli (Theatre) (Royal) Date_____
Morris Smith (Owner)
_____ (New Owner)

Distributor	Serving	Contract date	Signed by	Features	Comedies	Rec'd.	Mailed	Not O. K.
Columbia Pictures			M. Smith	28				
Educational & Prem			Morris Smith	5	22 2-reel, 12 1-reel.			
Enterprise Dist					82 slides	(?)		
Famous Players			Tal. State Amty. Co.	30				
Film Booking Of			Morris Smith	9	31			
First National			Morris Smith	40				
Fox Film Corp			Morris Smith	51	67			
Liberty								
Metro-Goldwyn			Morris Smith	42				
Pathe Exchange								
Producers Dist			Morris Smith	2				
United Artists								
Universal			M. Smith	21	2-reel Western.			
Vitagraph Inc								

Complaint_____ Exchange_____ Board_____
Mailed_____ Effective_____ Complied_____
Remarks: _____

Credit Committee:
CC 3/17 future list _____ _____
CC 3/29 $250 CTR _____ _____
CCOK 5/12 check rec'd. D W _____ _____
Exhibit #256. PW. 5/14/28

428

MARCH 9TH, 1927.

Mr. W. E. BRANSON,
Pathe Exchanges, Omaha, Nebr.

DEAR MR. BRANSON: Kindly advise in writing what disposition you made of the contract taken with E. M. Starcher, Starcher Theatre, Fairfax, South Dakota, before credit was established.

Yours very truly,

CREDIT COMMITTEE
_____, *Secretary.*

CF:RF.
Exhibit 182. PW. 5/14/28.

429

O. K. 3/16.

PATHE EXCHANGE, INC., BRANCH OFFICE,
1508 Davenport Street, Omaha, Nebr., March 12, 1927.

(Pathe trade-mark)

CREDIT COMMITTEE,
Omaha Film Board of Trade, Omaha, Nebr.

Attention: Clare Foley, secy.

DEAR MISS FOLEY: Answering your letter of the 9th, relative to disposition made of contracts taken with E. M. Starcher, Starcher

Theatre, Fairfax, S. D., before credit was established, we cancelled all previous contracts taken with Mr. Starcher and wrote new contracts after he was cleared by the credit committee.

We hope the above information is sufficient.

Very truly yours,

PATHE EXCHANGE, INC.,
W. E. BRANSON,
Branch Manager.

WEB/D.

Please address all communications to the company.

Exhibit 183. PW. 5/14/28.

430

JULY 7TH, 1927.

Miss M. BENJAMIN,
Secretary, Des Moines Film Board of Trade,
Des Moines, Ia.

DEAR MISS BENJAMIN: I wrote you on March 31st, April 7th, April 16th, April 27th, and May 3rd requesting information in regard to contract which Universal took for the Idle Hour Theatre, Klemme, Iowa, on February 9th and approved by wire dated February 10th. Credit was not established for this exhibitor until February 10th.

United Artists Corporation at Omaha took a contract from this exhibitor on February 4th and requested a security on February 5th. We do not want the United Artists Corporation to be placed at a disadvantage in any situation, and, therefore, would like to have an explanation of the Universal transaction.

May we please have a reply by return mail.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
——— ———, *Secretary.*

CF:RF.

Exhibit 245. PW. 5/14/28.

431

O. K. C. C. 7/16.

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Bldg., Des Moines, Iowa, July 8, 1927.

Office of secretary, Mary Benjamain

Miss CLARE FOLEY,
Omaha Film Board of Trade, Omaha, Nebr.

Re Idaho Hour—Klemme, Iowa

DEAR MISS FOLEY: In answer to your letter beg to state that Universal did take a contract for two specials, but the credit committee

had them cancel/ same immediately. Universal, however, did have a large contract on other features and short subjects signed by the former owner.

Trusting that this is the desired information, I am

Yours very truly,

DES MOINES FILM BOARD OF TRADE,
(Sgd.) M. BENJAMIN, *Secretary*.

MB.

Exhibit #246. PW. 5/14/28.

432 Please answer each question, sign, and return to credit committee, Omaha Film Board of Trade, Omaha, Nebr.

(Date) Nov. 1, 1927.

1. Name of theatre: Sign Theatre.
   Street address: ----------
   City and State: Crofton, Nebr.
2. Name of person, firm, or corporation operating theatre (if individual, give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): Mr. L. E. Ritts.
   Name of individual or individuals authorized to sign contracts: L. E. Ritts.
3. Is theatre owned or leased: Leased. If leased state expiration date of lease—1930—and name of lessee: L. E. Ritts. If owned, state name of owner: J. A. Walters.
4. On what date was theatre taken over: Oct. 7. Place where and date of recording bill of sale; ----------
5. Days open per week: 3. Changes per week. 2. Sunday shows: Yes. Seating capacity of theatre: 180 now. Admission prices, 10 and 25. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): I have road shows and movies (no vaudeville).
6. Condition of projection machines: Good. Make: Baird & Powers. Model: Powers 6 A; Baird (no model). Year: 1917. Number of machines: 2.
7. Name theatres heretofore conducted, stating location of each: None. (If answer to this question is "None," state nature of previous business and where conducted.)
8. Bank references: John Renforth, First National Bank.
9. Other references: Pt. Malone Product Station.
10. Specify contracts for film service made by the previous owner and if they will be assumed and completed: No.

Name of distributor. Date of contract. Number of pictures unplayed. Number of pictures unplayed.

No; I won't play these pictures or any others; only what I have contracted for.

My answer is "No" on these pictures.

433 The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.

(Signature) LOYD E. RITTS.
Owner.) (Lessee.) Strike out one.

If the answer to question 10 is "Yes," sign the following:

The undersigned hereby agrees to assume and fully perform each of the above listed contracts for film service at the above-named theatre.

(Signature) ——— ———.

Exhibit #171. PW. 5/14/28.

434 *Service report data*

Date, 10/25/27.

Crofton, Nebr. (Town & State) | Star (Theatre) | F. W. Larsen. (Owner) L. E. Ritts. (New owner)

Distributor	Serving	Contract date	Signed by	Features	Comedies	Recd.	Mailed	Not O. K.
Educational								
Enterprise								
Famous Players								
F. B. O.								
First National								
Fox Film Corp.								
Liberty								
Metro-Goldwyn								
Midwest Distb.								
Pathe								
Producers Distb.								
United Artists								
Universal								
Vitagraph, Inc.								

Complaint ---------- Exchange ---------- Board ---------- Mailed ---------- Effective ---------- Complied ---------- Remarks: No contracts taken over; old owner lost lease; Act of court can not make this man take those.
CREDIT COMMITTEE: C. C. O/K 11/16/27----------

Exhibit No. 172. PW. 5/14/28.

435 NOVEMBER 7TH, 1927.

Mr. W. C. BRIMMER,
First National Pictures, Inc., Omaha, Nebr.

DEAR MR. BRIMMER: It is the opinion of the credit committee that you should reject the contract which your salesman took with Mr. L. E. Ritts, Sign Theatre, Crofton, Nebraska.

Very truly yours,

OMAHA FILM BOARD OF TRADE.
———— ————, *Secretary.*

CC O. K. 11/16/27.
Exhibit No. 173. P. W. 5/14/28.

436 [Copy for Miss Foley]

NOVEMBER 8TH, 1927.

Mr. L. E. RITTS,
Sign Theatre, Crofton, Nebr.

DEAR MR. RITTS: We regret to advise that we are unable to accept the contract given Mr. Riddle under date of October 26th.

We trust, however, that we will be able to arrive at some satisfactory deal in the near future.

Very truly yours,

FIRST NATIONAL PICTURES, INC.
(Signed) W. C. BRIMMER, *Branch Manager.*

WCB'C.
Exhibit #174. PW. 5/14/28.

437

UNIVERSAL FILM EXCHANGES, INC.,
1513 Davenport St., Omaha, Neb., Nov. 9, 1927.

Address all replies to the office sending this letter and refer to

---

Miss ROSEMARY FOLEY,
Sec. Film Board of Trade, Medical Arts Bldg.,
Omaha, Nebr.

DEAR MISS FOLEY: We are inclosing herewith copy of letter sent Mr. Ritts, of Crofton, Nebr., advising him the contract taken by us has been rejected.

Very truly yours,

(Signed) H. J. CHAPMAN, *Manager.*

HJC/HB.
Exhibit #175. PW. 5/14/28.

438

Nov. 8, 1927.

Mr. LOYD E. RITTS,
Sign Theatre, Crofton, Nebr.

DEAR MR. RITTS: We wish to advise that the contracts taken on November 3d by our representative, Mr. Greenblatt, have not proven acceptable to us, and therefore kindly consider them rejected.

We will have Mr. Greenblatt call on you in the very near future with reference to getting together on service.

Very truly yours,

H. J. CHAPMAN, *Manager.*

HJC/HB.
Exhibit #176. PW. 5/14/28.

439

NOVEMBER 10, 1927.

Mr. L. E. RITTS,
Sign Theatre, Crofton, Nebr.

DEAR MR. RITTS: It has become necessary that we cancel our present contract with you.

However, at some future time we would be pleased to call on you again with reference to arranging new contracts.

Yours very truly,

(Signed) HARRY MELCHER,
Branch Manager.

HM G.
Exhibit #177. PW. 5/14/28.

440

NOVEMBER 17TH, 1927.

Mrs. M. M. DIETZ,
Secretary Minneapolis Film Board, Minneapolis, Minn.

DEAR MRS. DIETZ: This will acknowledge receipt of your letter dated the 16th. The Des Moines secretary thought the idea of exchanging service reports not a very good one because of the amount of time it would take to send these to the other boards and the fact

that the exchanges would have to make about three copies of every service report. Miss Littell said she thought each board was capable of handling their own exchanges in so far as keeping a check to see that no exchange oversells a new owner. This brings the question to my mind as to just how you handle this business of an exchange selling the new owner when service was still unplayed by the old owner. Do you allow your exchange to resell the new owner an amount of service equal to that under contract to the old owner covering the same amount of money or the same amount of pictures? By this I mean—if the old owner had 33 features under contract which represented about $750.00, do you allow the exchange to take a new contract for 33 features regardless of the amount represented by these 33 features or do you only allow them to take a new contract amounting to not more than $750.00. Do I make myself clear? It has been the practice of this board to let the exchange resell the new owner the same number of features, but Miss Littell informs me this is entirely wrong—that the exchange should be governed by the amount of revenue and not the number of pictures. In the future I will handle this the way she states is the correct way. I would like muchly to hear from you on this. When one is new in the business there are plenty of questions coming up, especially to this new secretary.

But to get back to the question about exchanging service reports—I really feel as Miss Littell does—it would bring on a lot of extra work—you know how these managers are though—always thinking the other fellow is getting the best of him. If they would trust each other a little more, it would mean a lot less work for the secretary. If we decide definitely to adopt this practice I will advise you. I am attaching a copy of the blank service reports which my exchange use to send in information as to unplayed service on an ac-
441 count. May be, you could get some ideas from this. We have found it very good.

Mrs. Dietz, I do not know why you say I must have been out of patience with you at times. I sincerely hope you really do not think this—but merely used it to show how really messed up the work was. I know you must have had a bad time of it from the stories I have gathered here and there regarding the former secretary. I, personally, do not see how anyone can take a salary check every month and be so awfully negligent about their duty—do you? I at least have a little conscience—may be I'm just old-fashioned.

From my conversations with the different secretaries I have decided my credit committee here is almost too severe—Miss Menagh, of Kansas City, who spent the week-end here says her credit committee is too lenient—so there you are—however, the Omaha board has been complimented for its wonderful work in having so many contracts transferred to new owners, so I guess I'll let them keep on the way they are.

We had quite a week-end. Mr. Pettijohn was here for the exhibitors' convention; also Mr. John Gentile of the conservation department of film boards. Miss Menagh came from Kansas City and

Miss Leona Matthews, the new secretary at Des Moines, and Miss Littell, who left for New York Monday night. We all had Sunday and Monday together, and it made me feel much better—getting the chance to talk with Mr. Pettijohn, Mr. Gentile, and the other secretaries. I don't feel quite so much like a stranger now.

I know that the Minneapolis, Des Moines, and Omaha boards will go along very smoothly from now on, and please don't think for a minute that I am in any position to become impatient with anyone—rather than some one would *be*come very impatient with me.

Kind personal regards. I will await meeting you in May, when we will all go to the convention, with a little anxiousness on account of the suspense. Mr. Pettijohn swears it will be one grand convention and I believe it will be if he says so.

Sincerely,

——— ———.

Exh. 227. P. W. 5/14/28.

442

Nov. 29, 1927.

MISS MATTHEWS: As you know, we have been carrying the Empire and Square Theatres, Ottumwa, Iowa, on our credit list. One of the contracts outstanding here, and which is keeping this exhibitor on the board, is a Midwest contract for three features and two single real comedies for the Square Theatre, contracted by the previous owner, Mr. D. B. Baker, three features for the Empress Theatre contracted for by the old owner.

Upon calling Midwest about this, they advise me that this account has been turned over to the Des Moines Office of Columbia, and I would appreciate it greatly if you would get in touch with them and find out if these pictures have been taken over. I am to-day taking the Midwest contract off my list and will place the responsibility of these contracts on the Des Moines board. There are still outstanding here United Artists and Vitagraph pictures.

If you are able to get same straightened out, please notify me.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

RF/MW.
Exhibit 243. PW. 5/14/28.

443

NOVEMBER 30, 1927.

DEAR MISS *MATTHEWS*: You have been carrying Cornelia, Iowa, a new Pavilion Theatre, on your credit list for many months, in fact since April of this year.

Miss Littell informed me that the reason credit was never established on this theatre, even though it was a new theatre, was because there was some personal feelings against the man who was opening it.

If credit has never been established, I do not see how that theatre is operating. I have to-day written to the postmaster at Clarinda.

Iowa, where it is necessary to send the mail for Cornelia, to see if this theatre has not been opened. If it has not, we may as well remove it from our credit list.

Yours very truly,

———— ————, *Secretary.*

RF/MW.
Exhibit #252. PW. 5/14/28.

444 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 IOWA BUILDING,
Des Moines, Iowa, December 16, 1927.

DEAR MISS FOLEY: Referring further to Cornelia, Iowa, I checked up with the postmaster at Clarion, Iowa, and found the Pavilion Theatre has been closed for sometime.

Inasmuch as the theatre is closed, and there is no service outstanding at this board, I think we might just as well eliminate the town from our credit list. What do you think?

Sincerely,

(Sgd.) LEONE MATTHEWS,
Secretary.

Exhibit #253. PW. 5/14/28.

445 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 IOWA BUILDING,
Des Moines, Iowa, December 16, 1927.

MISS FOLEY: I wonder if anything has been done on the United Artists contracts at Moline?

The Commonwealth Theatres, Inc., have assumed all contracts outstanding at this board and also the educational comedies out of Chicago, so we are waiting for the United Artists to clear them.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exb. 161. PW. 5/14/28.

446 DEC. 19, 1927.

Miss LEONE MATTHEWS,
210 Iowaa Bldg., Des Moines Film Board of Trade,
Des Moines, Iowa.

DEAR MISS MATTHEWS: This is to advise you that Mr. McLucas of United Artists telephoned me Saturday that the Commonwealth Theatres, Inc., have taken over the United Artist pictures and therefore I am clearing this account.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

HF/MB.
Exb. 162. PW. 5/14/28.

447 JAN. 4, 1928.

DEAR MISS MATHEWS: In view of the fact that the credit committee of the Des Moines board will have jurisdiction over the establishing of credit in all counties in Iowa under the new plan outlined by the home office, with the exception of the first two tiers of counties on the western boundary, we will, of course, expect your credit committee to take into consideration outstanding contracts here at Omaha and give them the same consideration as the Des Moines contracts.

As soon as I have received service reports on Iowa towns not in my territory, I will immediately advise you of such service, and we will expect protection on these contracts, and unless given same we will attempt to have the new plan rescinded and the old one put back into force so that our contracts may be protected.

I am sure your credit committee will cooperate with the Omaha board to this extent and will appreciate it if you will read this letter to your credit committee at its next meeting.

Yours very sincerely,

——— ———, *Secretary.*

RF/MV.
Exh. 230. PW. 5/14/28.

448 JAN. 7, 1928.

DEAR MISS MATTHEWS: With reference to the opera house at Clermont, Ia., which has been purchased by Mr. E. M. Houg from Mr. C. C. Christ, please be advised there is the following service outstanding at Omaha: United Artist, 12 features.

Please take this contract into consideration when establishing credit.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
——— ———, *Secretary.*

RF/M.
Exhibit #240. PW. 5/14/28.

449 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–211 Iowa Building, Des Moines, Iowa, January 20, 1928.

DEAR MISS FOLEY: Have you had any correspondence with Mr. E. M. Houg, of the opera house, Clermont, Iowa, concerning the twelve United Artists pictures outstanding at your board?

Mr. Houg has written this board that he does not wish to assume any contracts. He advises the American Legion has taken over the theatre with the thought in mind of creating the good will of the public rather than trying to make any money. They are desirous of using two distributors' service, but neither one were listed on our questionnaire, and I have been wondering whether or not he sent you

the same letter regarding the United Artists product. I really think they have Paramount and Metro in mind.

The credit committee at this board does not wish to clear the account under these circumstances, unless it is satisfactory to the distributors holding contracts.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exhibit 241. PW. 5/14/28.

450 JANUARY 20, 1928.

Mr. HARRY MELCHER,
Fox Film Corp., 1509 Chicago St., Omaha, Nebr.

DEAR MR. MELCHER: In view of the fact that Fox Film Corp. had only 40 features and 37 comedies under contract with Mr. A. J. Meyers for the Star Theatre, Dannebrog, Nebraska, the new contract which you have taken with Mr. H. E. Rasmussen for 58 features and 27 comedies and 104 news is in excess.

You realize, Mr. Melcher, that you may sell a new owner whose credit has not been established to the extent of your old contract.

Please advise me what action you take on this.

Thank you kindly for your cooperation in this matter.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———, *Secretary.*

RF/MW.
Exhibit #180. PW. 5/14/28.

451 Branches all principal cities of the world.

William Fox, president.

FOX FILM CORPORATION. HEAD OFFICE WEST 55TH STREET, NEW YORK

Telephone, Columbus 3320. Cable address, Fox Film, New York

1509 CHICAGO STREET, OMAHA, NEBR., *January 22, 1928.*

Miss R. FOLEY,
Omaha Film Board of Trade,
Medical Arts Building, Omaha, Nebraska.

DEAR MISS FOLEY: With reference to the contracts we have taken at Dannebrog, Nebraska, signed by Mr. H. E. Rassmussen, it is my understanding that this is a new theatre with new equipment; therefore, it was not necessary to establish credit before selling.

However, if this turns out to be anything but a new theatre, I will be glad to cancel contract accordingly to the amount of pictures we formerly had under contract.

Yours very truly,

(Signed) HARRY MELCHER,
Branch Manager.

M G.
Exhibit #181. PW. 5/14/28.

452 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 IOWA BUILDING,
Des Moines Iowa, February 6th, 1928.

DEAR MISS FOLEY: The credit committee at this board to-day established credit at Clermont, Iowa, without protecting any contracts. Their reason for so doing was on account of the fact that Clermont has been such a poor account—never able to keep open more than half the time, and they thought if they could help the American Legion get started it would be better than having the town closed.

Will you kindly explain the situation to United Artists.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exhibit 242. PW. 5/14/28.

Service report data

453 Date, 12/2/27.

Atlantic, Ia. (Town & State) | Strand & Atlantic Theatres | Watson & Pierce. (Owner) | Oscar Johnson. New Owner

Distributor	Serving	Contract date	Signed by	Features	Comedies	Recd.	Mailed	Not O. K.
Educational								
Enterprise								
Famous players								
F. B. O								
First National								
Fox Film Corp								
Liberty	20.00				8 Poetic Jewells.			O. K. 12/30/27.
Metro-Goldwyn	1642.00			49	35 2-reel; 56 news.			O. K. 12/6/27.
Midwest Distb								
Pathe								
Producers Distb								
United Artists				The Circus.				O. K. 12/30/27.
Universal								
Vitagraph, Inc	435.00			26				O. K. 3/2/28.

Complaint_____ Exchange_____ Board_____

Mailed_____ Effective_____ Complied_____

Remarks_____

Credit committee:
CC $250 ft. 1/23/28.
CC O. K. 3/3/28.

Exh. 76. PW. 5/14/28.

454 Please answer each question, sign, and return to credit committee Omaha Film Board of Trade, Omaha, Nebr.

(Date) DECEMBER 2ND, 1927.

1. Name of theatres: Atlantic and Strand Theatres.
Street address----------
City and State, Atlantic, Iowa.
2. Name of person, firm, or corporation operating theatre. (If individual, give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): O. C. Johnson. Name of individual or individuals authorized to sign contracts: O. C. Johnson.
3. Is theatre owned or leased: Leased. If leased, state expiration date of lease: December 1934 and name of lessee---------- If owned, state name of owner: Mr. Yeanos.
4. On what date was theatre taken over: December 4, 1927. Place where and date of recording bill of sale----------
5. Days open per week: seven. Changes per week: three or four. Sunday shows: Yes. Seating capacity of theatre: Atlantic, 650; Strand, 500. Admission prices: 10-25. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): Vaudeville once in a while.
6. Condition of projection machines: O. K. Make: Simplex. Model: Year. Number of machines: Four.
7. Name theatres heretofore conducted, stating location of each: Dakota Theatre, Yankton, So. Dak.; Grand Theatre, Estherville, Ia.; Solon-Fraser and Grand, Spencer, Ia. (If answer to this question is "None", state nature of previous business and where conducted)----------
8. Bank references: First National, Yankton, S. Do'.
9. Other references: R. G. Ilers, Hudson, So. Dak.
10. Specify contracts for film service made by the previous owner and if they will be assumed and completed:

Name of distributor. Date of contract. Number of pictures unplayed. *Number of pictures unplayed.* Will endeavor to get together with exchanges holding contracts.

Will take over all outstanding contracts with the exception of Warner Bros.

455 The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.

(Signature) O. C. JOHNSON.
(Owner) (Lessee) Strike out one

If the answer to question 10 is "Yes," sign the following:

The undersigned hereby agrees to assume and fully perform each of the above listed contracts for film service at the above named theatre.

(Signature) O. C. JOHNSON.

Exh. 77. PW. 5/14/28.

456 DEC. 2, 1927.

DEAR MISS MATTHEWS: Mr. O. C. Johnson has purchased the Strand and Atlantic Theatres at Atlantic, Iowa, and is in Omaha to-day endeavoring to get together with the exchanges on the contracts which they held with the old owners, Watson & Pierce.

He states he will be in Des Moines the first part of the week, so we suggest that you get a line-up of service outstanding at Des Moines so you will have it together when he comes. I have put him on my credit list under Omaha, as he has not been cleared here.

He states he will play independent pictures rather than take over a lot of stuff under contract at the prices at which it was bought.

This is for your information.

Sincerely,

———— ————, *Secretary.*

RF/MV

Exh. 78. PW. 5/14/28.

457 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 IOWA BUILDING,
Des Moines, Iowa, December 5th, 1927.

DEAR MISS FOLEY: Thank you for your letter concerning Atlantic, Iowa.

Mr. JOHNSON is in the city to-day trying to get straightened up with the different film companies. He will meet with the credit committee to-morrow, and I will advise you after the meeting just what is accomplished.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exh. 79. Pw. 5/14/28.

458 JAN. 3, 1928.

DEAR MISS MATTHEWS: My credit committee have asked me to call your attention to the fact that O. C. Johnson, operating the Atlantic and Strand Theatres at Atlantic, Iowa, is okay here.

Mr. Johnson was in my office the other day and advises me that he wishes to buy a new Fox contract at Des Moines.

This is for your information.

Very truly yours,

———— ————, *Secretary.*

RF/MW.
Exh. 80. PW. 5/14/28.

459 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 IOWA BUILDING,
Des Moines, Iowa, January 4th, 1928.

DEAR MISS FOLEY: Thanks for the information regarding Atlantic. I will keep close check on this and see whether or not Fox sells a contract.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exh. 81. PW. 5/14/28.

460 ATLANTIC AND STRAND THEATRES,
Atlantic, Iowa, February 10th, 1928.

Miss FOLEY,
Secretary, Film Board of Trade, Omaha, Nebr.

DEAR MADAM: Thought I would advise you that on the 8th day of February, 1928, I made application for contract with Fox and paid them the sum of $200, as requested.

I wish you would advise me as soon as the board clears me, which I feel they should do at once or never.

Mr. Bell, of Warner Brothers, wrote me last week and advised me that he would like to see me, but as the roads are in tuff shape think I will not be able to make it for a while. I wrote him and told him that if he had anything important to advise me by mail, but have heard nothing from him.

Yours very truly,

O. C. JOHNSON.

Exh. 82. PW. 5/14/28.

461

ATLANTIC AND STRAND THEATRES,
Atlantic, Iowa, March 6th, 1928.

Miss FOLEY,
Secretary, Film Board of Trade, Omaha, Nebr.

DEAR MISS FOLEY: Thought I would advise you that I have finally gotten together with Warner Brothers, and contracts have already been approved. Kindly advise interested parties that same has been fixed up and oblige.

Yours very truly,

O. C. JOHNSON.

Exh. 83. PW. 5/14/28.

462

MARCH 16, 1928.

DEAR MISS MATTHEWS: I have discovered that the reason you probably did not notice that credit had been established for Atlantic, Iowa, by this board was because I listed credit-established towns at the bottom of my credit list dated March 3rd.

If you will look on my credit list dated March 3rd, which I am sure you received, you will note at the bottom Atlantic, Iowa, is listed.

We also eliminated Denison, Iowa, and established credit for Sloan, Iowa.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

RF/M.
Exb. 84. PW. 5/14/28.

463 *Service report data*

Date, 1/26. Liberty.

Bettendorf, Ia. (Town & State) Princess (Theatre) J. J. Georgin. (Owner)

J. H. Pabst—runs Mirror Davenport

Distributor	Serving	Contract date	Signed by—	Features	Comedies	Rec'd	Mailed	Not O. K.
(Premier) Educational								
First National								
Film booking of								
Famous Players								
Fox Film Corp.								
Independent			FJG					
Liberty			FJG	19				
Metro								
Pathe								
Producers								
United Artists	300.00		FJG	10				OK3/12
Universal								
Vitagraph			FJG	7-3				

Complaint ____ Exchange ____ Board ____
____ Mailed ____ Effective ____ Complied ____
____ Remarks: ____
Questionnaire mailed ____ Returned ____ O. K. ____
____ Reported by ____ on ____ Date.
To committee, 2/6 CC Ft. Cash security, $150 ____
Chi. 2/2/26 not serving in list. ____
Data to Des. M. 1/30. D. M. CC $250. ____
Chi. & Des. M. Not O. K. 7/13. ____
Des. M. O. K. 1/30. CC O. K. 2/7. Chi. O. K. 2/2. ____
Exh. 86. PW. 5/14/28.

464 J. D. Abramson, executive secretary. Telephone Harrison 4119
CHICAGO FILM BOARD OF TRADE,
SUITE 316–317, STANDARD OIL BLDG.,
910 South Michigan Avenue, Chicago, July 20, 1926.

OMAHA FILM BOARD OF TRADE.
DES MOINES FILM BOARD OF TRADE.

Attention of secretaries

GENTLEMEN: In following up my letter of July 13th, that portion dealing with the carrying of the Princess Theatre, Bettendorf, Iowa, as a change of ownership with an FT rating $250.00 on our confidential credit information lists (current issues), and subsequent to advice received from the Omaha secretary under date of July 14, 1926, wherein we were advised that Mr. Pabst, new owner, this theatre, has assumed the contracts of Metro-Goldwyn and First National from his predecessor, Mr. Georgan, would appreciate if some efforts would be made to protect Vitagraph, Inc., on their contract for 10 unplayed features.

We have to-day directed Vitagraph to advise the new owner titles of these unplayed features, at the same time requesting playing time. Therefore, any cooperation extended by your credit committees should bring about the desired results, especially since the

465 FT rating of $250.00 has not been removed and should not be removed until the Vitagraph contract is fully protected.

Your early advice in this matter will be highly appreciated.

Yours very truly,

CHICAGO FILM BOARD OF TRADE,
J. D. ABRAMSON,
Executive Secretary.

Copy to Vitagraph, Inc.
Exhibit No. 87. PW. 5/14/28.

466 JANUARY 22ND, 1927.

Mr. J. D. ABRAMSON,
Secretary, Chicago Film Board of Trade,
Standard Oil Bldg., Chicago, Ill.

DEAR MR. ABRAMSON: Miss Benjamin advises that credit is O. K. at Bettendorf, Iowa, as far as the Des Moines board is concerned.

Will you kindly advise status of this account at Chicago? Credit has not as yet been established here.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

CF: RF.
Exhibit No. 88. PW. 5/14/28.

467 J. J. Sampson, president. J. D. Abramson, executive secretary. Telephone, Harrison 4119

CHICAGO FILM BOARD OF TRADE,
SUITE 316–317 STANDARD OIL BLDG.,
910 South Michigan Avenue, Chicago, January 24, 1927.

Miss CLARE FOLEY,
Secretary Omaha Film Board of Trade,
1508 Davenport, Omaha, Neb.

DEAR MISS FOLEY: Have noted your letter of the 22nd instant wherein you advise having been advised by Miss Benjamin, secretary, Des Moines Film Board of Trade, that credit is O. K. at Bettendorf, Iowa, as far as the Des Moines board is concerned.

Since Vitagraph, Inc., have 10 unplayed pictures not taken care of by the new owner of the Princess Theatre, Bettendorf, Iowa, we will naturally continue to carry the rating of FT $250 until such time as Vitagraph's contracts are fully protected.

We have noted that credit has not as yet been established with respect to this exhibitor at Omaha.

Very truly yours,

CHICAGO FILM BOARD OF TRADE,
J. D. ABRAMSON,
Executive Secretary.

JDA/LA.
(Exhibit 89. PW. 5/14/28.)

468

FILM BOARD OF TRADE,
469 Fifth Avenue, New York, January 27, 1927.

CHARLES C. PETTIJOHN, *General Counsel.*
GABRIEL L. HESS, *General Attorney.*

Miss CLARE FOLEY,
Secretary Omaha Film Board of Trade, Omaha, Nebraska.

DEAR MISS FOLEY: For your information enclosed is a copy of a letter which I have written to the secretary of the Chicago Film Board of Trade concerning the Princess Theatre, Bettendorf, Iowa.

Yours truly,

GABRIEL L. HESS,
General Attorney.

Encl.
Exh. 231. PW. 5/14/28.

469

[Copy]

DES MOINES FILM BOARD OF TRADE,
Des Moines, Iowa, January 26, 1927.

Mr. GABRIEL HESS,
Attorney Film Boards of Trade,
469 Fifth Avenue, New York, N. Y.

DEAR MR. HESS: Regarding the Princess Theatre, Bettendorf, Iowa, beg to state that this case has been on the credit committee report for over a year, notwithstanding that over eighty-five per cent of the features that were under contract have been taken over.

There seems to be some misunderstanding on the part of Vitagraph, of Chicago, which have only seven features under contract. The reason the Chicago board does not establish credit is that they insist that it is a fake transfer, which we know is not the case. The old owner, Mr. Georgan, was forced to give up the house, as he was unable to meet his financial obligations, and because J. H. Pabst held the original mortgage on the building the bank requested him to take this theatre off their hands.

Mr. Pabst has operated the Mirror Theatre, Davenport, Iowa, for a number of years, and bears a very good reputation and has never at any time had any trouble with the film exchanges. We would like to have you take this matter up with Omaha and Chicago and have them establish credit on this account on their records, due to the fact that Mr. Pabst assumed 180 features from various companies out of a total of 196 that the former owner had under contract. All contracts in this territory have been satisfied, and we would like to have this account relieved of any responsibility of the few remaining pictures.

Thanking you for a reply, we are

Yours very truly,

DES MOINES FILM BOARD OF TRADE,
W. E. BANFORD, M. B.

Copy to Miss Clare Foley, secy., Omaaha F. B. Tr.
Exh. 232. PW. 5/14/28.

470 JAN. 27, 1927.

Mr. J. D. ABRAMSON,
Secretary Chicago Film Board of Trade,
Chicago, Ill.

DEAR MR. ABRAMSON: With further reference to the Princess Theatre, Bettendorf, Iowa, we advised the home office of Universal that the fact that they are serving only two real westerns and two real comedies to this theatre does not make it any less a violation of the credit committee rules, because it is the making of a contract without having obtained the security required by such rules that creates a violation thereof.

It appears that the film booking offices, Des Moines manager, did not enter into a new contract but agreed with the present owner to a reduction of the former owner's contract from $984.00 to $522.50.

Metro-Goldwyn's home office were advised that it was a clear violation of the credit committee rules to cancel the old contract and sell the same amount of pictures on the 1925–1926 product to the new owner without obtaining the required security.

The Fox film home office advises that, while at first it appeared from the records of the Chicago office there was no contract with the Princess Theatre, Bettendorf, upon further investigation it was disclosed that a contract had been made with the Mirror Theatre, Davenport, Iowa, with the understanding that on a certain night in any week the right to show the picture in the Bettendorf Theatre (not Princess Theatre) was granted without charge being made therefor. That it developed that Bettendorf, Iowa, is a suburb of Davenport, Iowa, which was unknown to the office of Fox Film Corporation. Under the circumstances I do not think the Fox office can be held to have intentionally violated credit committee rules.

In view of the fact that the Des Moines Film Board of Trade has withdrawn the name of the Princess Theatre at Bettendorf from its credit information list, I recommend that nothing further be done in the matter. The fact that Vitagraph, (Inc.) have unplayed pictures under a contract made by the former owner of the theatre which was not assumed by the present owner of the Princess Theatre is not of itself sufficient reason for continuing to carry the name of the theatre on the credit information list. As you well know, the

471 mere refusal of the new owner of a theatre acquired in a bona fide transaction to assume the existing contracts of the prior owner is not of itself sufficient ground for an unfavorable credit report upon the credit standing of the new owner.

As the credit rating of the owner of this theatre originated in Des Moines, it should follow that upon the report of the credit committee of that film board of trade of the withdrawal of the name of the

theatre from its credit information list it should also be withdrawn from the credit information lists issued by the Omaha Film Board of Trade and your board.

Sincerely yours,

GABRIEL L. HESS,
General Attorney.

Copy to Miss Clare Foley, secy. Omaha Film Board of Trade.
Miss M. Benjamin, secy. Des Moines Film Board of Trade.
Exhibit No. 233. PW. 5/14/28.

472

Chi. O. K. 2/2.

FILM BOARDS OF TRADE,
469 Fifth Avenue, New York, January 31, 1927.

CHARLES C. PETTIJOHN, *General Counsel.*
GABRIEL L. HESS, *General Attorney.*

Miss CLARE FOLEY,
Secretary Omaha Film Board of Trade, Omaha, Nebr.

DEAR MISS FOLEY: Wtih further reference to the Princess Theatre, Bettendorf, Iowa, I inclose herewith copy of a letter from W. E. Banford, president of the Des Moines Film Board of Trade, dated January 26, 1927.

Please be guided accordingly.

Yours very truly,

(Sgd.) GABRIEL L. HESS,
General Attorney.

Encl.
Exhibit No. 234. PW. 5/14/28.

473

FEBRUARY 9TH, 1927.

Mr. GABRIEL L. HESS,
General Attorney, Film Boards of Trade,
469 Fifth Ave., New York, N. Y.

DEAR MR. HESS: This will acknowledge receipt of your letters of January 27th and 31st, together with copy of letter you addressed to the Chicago board, as well as a letter which the Des Moines president addressed to you.

This entire matter has been very carefully considered by our credit committee and following your suggestion we have eliminated Bettendorf from the credit information list, especially in view of the information contained in the copy of the letter Mr. Banford wrote to you. This was the first time this information had been transmitted to us; in fact the first time the Des Moines board explained why they had proceeded to establish credit.

With reference to your letter of the 27th addressed to Mr. Abramson, we do not understand your statement in the last paragraph in same. We believe that where more than one exchange center is involved and there are several exchanges doing business with an

exhibitor then each board should have equal right to pass upon the credit of the exhibitor. However, we are always glad to receive any information any other board may have in regard to an account and to give it the proper consideration.

As a suggestion we outline the procedure which we have been following here in cases of interlapping territory: As soon as a town appears on the credit information list of another board, if the town is in this territory it is immediately added to our list and the secretary checks the exhanges to find out if any of the members of this board are serving the account. If none of them are serving, then the secretary of the interlapping board is immediately advised that as far as this board is concerned credit may be considered O. K., and we will await the decision of their credit committee. At the same time the town is listed on our credit information list, but under the name of the board carrying it.

However, if upon checking the exchanges we find that some of them are serving the account then we feel that we have equal rights with the members of the board first listing the account to pass upon the new exhibitor's credit. In that case the name of the theatre
474 is retained on the list under the heading of this board. In the case of any account interlapping with another board we also transmit all information which comes to this office to the other secretary, and they in turn should do the same. If after considerable investigation we believe the exhibitor's credit is O. K., we so advise the secretary in the interlapping territory and give them our reason for same. We then carry the name of the account on the lists under the name of the board who has not yet established credit and still await their decision.

This is the way the Bettendorf case was handled. However, the Chicago, Des Moines, and Omaha boards have all carried the new owner of this theatre on the list since January 26th, 1926, and we were not notified by the Des Moines board until January 20th, 1927, that they had established credit, and we have never been advised by them why they established credit. It is possible that the credit committee in this board would have immediately rendered a favorable report on this exhibitor if we had been furnished the information which Mr. Banford wrote you. The investigations conducted by this board never brought to light any of this information, and the exhibitor did not advise how he had taken over the theatre.

We trust in view of the above explanation that you will permit us to continue to make our own decisions on accounts served by members of this board, regardless of decisions of other credit committees.

At the same time, however, we will always protect the other boards and retain the exhibitor on our credit information list until they have established credit.

This plan has worked out very successfully in all cases where secretaries have been alert in transmitting information received.

Yours very truly,

CREDIT COMMITTEE,
———— ————, *Chairman.*

CF: RF.
Exhibit No. 235. PW. 5/14/28.

[Copies]

475

FILM BOARDS OF TRADE,
469 Fifth Avenue, New York, February 15, 1927.

CHARLES C. PETTIJOHN, *General Counsel.*
GABRIEL L. HESS, *General Attorney.*

C. C. 2/28 read and considered. Continue to operate as at present.

Miss CLARE FOLEY,
Secretary, Omaha Film Board of Trade, Omaha, Nebr.

DEAR MISS FOLEY: This is in reply to your letter of February 9, 1927.

Following is an explanation of the last paragraph of my letter of January 27, 1927, to Mr. Abramson:

If a change of ownership of a theatre located in territory served by members of the Des Moines and the Chicago Film Boards of Trade is reported to your credit committee and in accordance with the rules the name of the theatre is listed on your credit information list pending investigation, such change of ownership should be immediately reported to the respective credit committees of the other boards and the name of the theatre should be listed by those boards upon their respective credit information lists.

If upon completion by your credit committee of the investigation your committee is satisfied that the transfer was a bona fide one, and the exhibitor worthy of a good credit rating, notice to such effect should be immediately given to the other film boards of trade and the name of the theatre removed from your credit information list as well as from the credit information lists of the other boards. Or, if your credit committee should report the transfer as one made with the intent to avoid uncompleted contracts, or that the exhibitor refuses to answer the credit committee's questionnaire, then such fact should be reported to the other board, together with the
476 amount of security fixed by your credit committee to be specified opposite the name of the theatre. Such amount of security should then appear upon your credit information list as well as upon the credit information lists of the other boards.

The difficulty with the position taken by you that if it is found the members of your board are serving an account first listed upon the credit information list of one of the other boards, such condition gives your credit committee equal rights with the members of the

boards first listing the account, is that there may be a difference of opinion between the two credit committees, or if there is no difference of opinion as to the credit rating of the exhibitor or the report to be made thereon, there may be a clear difference of opinion as to the amount of security that such exhibitor should be required to deposit as a condition for entering into new contracts.

Therefore, I advise that the credit committee first listing the name should be the guide for all the members of all the film boards of trade concerned with the credit rating of the particular exhibitor under consideration. I assume, of course, that each credit committee of the three boards will carefully consider such information as may be submitted to it by any of the other credit committees.

Accordingly, I cannot approve of the continuance of the plan heretofore followed by you, and must ask you to be guided by what I have outlined above as the proper procedure to be pursued. I am sending a copy of this letter to the Chicago Film Board of Trade and to the Des Moin. Film Board of Trade.

Yours very truly,

GABRIEL L. HESS,
General Attorney.

Copy to—
Mr. J. D. Abramson, Chicago Film Board of Trade.
Miss M. Benjamin, Des Moines Film Board of Trade.

Exh. 236. PW. 5/14/28.

477 *Service report data* (R)

Date, 1/29 Metro.

Brayton, Iowa. (Town & State) — Brayton. (Theatre) — Lawrence Lehr. (Owner)

Ormo Rasmussen. (New owner)

Distributor	Serving	Contract date	Signed by—	Features	Comedies	Rec'd.	Mailed	Not O. K.
Asso. Exhibitors								
Educational								
Enterprise Dist								
Famous Players								
Film Booking Of								
First National								
Fox Film Corp								
Liberty								
Metro-Goldwyn	105.00		Lehr	15				T. O. K. 3/13
Pathe Exchange	18.00		Lehr	1				11/12/26, O. K.
Premier Pictures								
Producers Dist.								
United Artists								
Universal								
Vitagraph, Inc	Holding contract with new owner.							

478 Complaint_____ Exchange_____ Board_____
Mailed_____ Effective_____ Compiled_____
Remarks_____
Credit committee:
C. C. 2/7 $200 C. I. R. (See PM file.) C. C. O. K. 3/29 to Des. M. 3/29. D. M. C. C. O. K. 9/20 per telephone.

Exb. 98. PW. 5/14/28.

479 JAN. 31ST, 1927.

Mr. ORMO RASMUSSEN,
Our Theatre, Brayton, Ia.

DEAR Mr. RASMUSSEN: We are informed that you have taken over the Our Theatre at Brayton, Iowa, and in view of this fact we are enclosing herewith a questionnaire which we ask that you kindly sign, fill in, and return within five days.

This is very important and as much for your protection as for our information, as the credit committee in this board performs the same duty as the credit man in a mercantile house. If a man's credit is not known, it is necessary for him to establish it; therefore, we trust that you will kindly give this information attention and return the enclosed questionnaire.

Very truly yours,

CREDIT COMMITTEE,
———— ————, *Secretary.*

CF: RF.
Exh. 90. PW. 5/14/28.

480 FEBRUARY 5TH, 1927.

Mr. ORMO RASMUSSEN,
Our Theatre, Brayton, Ia.

DEAR Mr. RASMUSSEN: On January 31st we sent you a questionnaire asking that you kindly fill in and return same within five days.

This you have not done, and thinking possibly you misplaced it, we are enclosing another with the request that you give this your immediate attention. This is a very important matter and I am sure you will give us your cooperation by returning this form immediately.

Yours very truly,

CREDIT COMMITTEE,
———— ————, *Secretary.*

CF: RF.
Ex. 91. PW. 5/14/28.

481 Please answer each question, sign, and return to credit committee, Omaha Film Board of Trade, 6 Film Exchange Building, Omaha, Nebr.

1. Name of theatre, Brayton Theatre. Street address, ————————. City and State, Brayton, Iowa.
2. Name of person, firm, or corporation operating theatre (if individual give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): The business men of the town of Brayton.
3. Is theatre owned or leased: Leased. If leased state expiration date of lease: No set date; and name of lessee ———————— If owned state name of owner ————————
4. On what date was theatre taken over: 9/1/26. Place where and date of recording bill of sale ————————

5. Seating capacity of theatre: 150. Admission prices, 10 & 25¢. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): Motion pictures.
6. Condition of projection machines: Good. Model ---------- Year: About 1923.
7. Name theatres heretofore conducted, stating location of each (if answer to this question is "None," state nature of previous business and where conducted) ----------
8. Bank references: Brayton Savings Bank.
9. Other references ----------
10. Specify contracts for film service made by the previous owner and if they will be assumed and completed: Name of distributor: Pathe. Date of contract: Unable to say. Number of pictures unplayed: 1. Number of pictures undated: 1.

There were two old contracts when we took over the theatre, and we ran all the pictures from the one company; on the Pathe contract there were 7 or 8 pictures and we have ran them all but one, which we hope to play within a short time.

482 The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.

(Signature) BRAYTON THEATRE,
ORMO L. RASMUSSEN,
Lessee.

If the answer to question 10 is "Yes," sign the following:

The undersigned hereby agrees to assume and fully perform each of the above listed contracts for film service at the above named theatre.

(Signature) ——— ———.

483 GENTLEMEN: Please pardon this report of being delinquent, but you realize this show business in a small town is only a side line and we are not as exact with our correspondence as we should be.

Yours truly,

ORMO L. RASMUSSEN.

Ext. 92. PW. 5/14/28.

484 FEBRUARY 11, 1927.

Mr. ORMO L. RASMUSSEN,
Brayton Theatre, Brayton, Ia.

DEAR MR. RASMUSSEN: I thank you kindly for the questionnaire which you returned and note that you have listed only the Pathe contract. I am wondering if you know about the Metro-Goldwyn contract for 15 pictures for this theatre.

Please let us hear from you.

Yours very truly,

OMAHA FILM BOARD OF TRADE.
———, *Secretary.*

CF: RF.
Exh. 93. PW. 5/14/28.

485 BRAYTON, IOWA, *Feb., 14, 1927.*

Mr. CLARE FOLEY,
Sec. Omaha Film Board of Trade, Omaha, Nebr.

DEAR MR. FOLEY: Yours of the 11th inst. at hand and wish to state that I was unaware of an unrun contract with Metro-Goldwyn until I received your letter.

Since we have taken over the theatre all we have done is run out old contracts and some of them at a loss of money to the theatre, and we hoped that we had them all run out with the exception of the one Pathe which I mentioned in my report.

I would very much like to run out the Metro-Goldwyn contract, but at present I cannot see where I'll have any open dates for some time.

Yours very truly,

BRAYTON THEATRE.
ORMO L. RASMUSSEN.

Advised Metro of this, 2/28.
Exh. 94. PW. 5/14/28.

486 MARCH 29th, 1927.

Miss M. BENJAMIN,
Secretary, Des Moines Film Board of Trade,
Des Moines, Ia.

DEAR MISS BENJAMIN: As far as the Omaha board is concerned credit of the Brayton Theatre, Brayton, Iowa, is O. K. This exhibitor has written to Warner Brothers advising that he has taken over all the contracts and he does not understand why his credit is not O. K.

Please get in touch with him about this.

Yours very truly,

CREDIT COMMITTEE,
——— ———, *Secretary.*

CF:RF.
Exb. 100. PW. 5/14/28.

487 APRIL 15th, 1927.

Miss M. BENJAMIN,
Secretary, Des Moines Film Board of Trade,
Des Moines, Ia.

DEAR MISS BENJAMIN: Attached hereto is a copy of a letter from Mr. Ormo L. Rasmussen, of Brayton, Iowa, to Vitagraph, Incorporated.

We advised you March 29th that credit was O. K. here and have been awaiting advice from you that credit was established at Des Moines.

In view of the exhibitor's letter will you please get after this immediately and get this cleared up as the situation is getting acute.

Yours very truly,

OMAHA FILM BOARD OF TRADE.
——— ———, *Secretary.*

CF:RF.
Exh. 95. PW. 5/14/28.

488 JULY 7TH, 1927.

Miss M. BENJAMIN,
Secretary, Des Moines Film Board of Trade,
Des Moines, Ia.

DEAR MISS BENJAMIN: I refer you to my letters of March 29th, April 15th, April 27th, and May 3rd requesting an explanation as to the situation at Brayton, Iowa, especially in view of the letter which Mr. Rasmussen wrote to Vitagraph, copy of which was sent to you.

May we please have a reply immediately as the exchanges here are interested in knowing why credit has not been established. Will appreciate your prompt attention to this request.

Yours very truly,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

CF:RF.
Exb. 96. PW. 5/14/28.

489 Office of Secretary, Mary Benjamin. Phone Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building, Des Moines, Iowa, July 8, 1927.

Miss CLARE FOLEY,
Omaha Film Board of Trade, 1508 Davenport St., Omaha, Nebr.

DEAR MISS FOLEY: For your information please be advised that I have telephoned Fox Film Corporation several times in regard to Brayton and they advise as yet the owner of Brayton, Iowa, has not assumed their contracts.

They state they will route a salesman down there again this week and see what he can do towards having this exhibitor sign an agreement.

Trusting that this is the desired information, I am

Yours very truly,

DES MOINES FILM BOARD OF TRADE.
M. BENJAMIN, *Secretary.*

Exb. 97. PW. 5/14/28.

490 Phone Market 2051. Address all correspondence to M. Benjamin, secretary

DES MOINES FILM BOARD OF TRADE

Exhibitors, He Profits Most Who Serves Best. Exchanges: Omaha exchanges affiliated

DES MOINES, IOWA,
519 Iowa Bldg., April 13, 1926.

Miss CLARE FOLEY.
Omaha Film Board of Trade, Omaha Nebr.

DEAR MISS FOLEY: For your information please be advised that Famous-Educational and F. B. O. have not been taken care of by

Mr. Lehr of Brayton, Iowa. Kindly see that these exchanges are taken care of before credit is established.

Yours very truly,

DES MOINES FILM BOARD OF TRADE,
M. BENJAMIN, *Secretary.*

Exb. 99. PW. 5/14/28.

491

Service report data

Date, 1/21. Universal-Molseed.

Burke, So. D. (Town & State) — Community (Theatre) — C. S. Yeager. (Owner)

(New owner)

Distributor	Serving	Contract signed by—	Features	Comedies	Recd.	Mailed	Not O. K.
Educational							Henry Hogrefe & J. F. Quinn, per Yeager.
Enterprise							
Famous Players		Minneapolis	21				O. K.
F. B. O.		Claude Yeager	60	120			
First National		Claude Yeager	59				
Fox Film Corp	$720.00	Claude Yeager	16	19			O. K. 3/14.
Liberty							
Metro-Goldwyn	$130.00	Claude Yeager	12				O. K. 5/26.
Midwest Dist.							
Pathe		C. Yeager	4				
Producers Dist.		C. Yeager	12				
United Artists		C. Yeager	10				
Universal		C. Yeager	C. S. 12 weeks				
Vitagraph, Inc.		C. Yeager	12	9			

Complaint_____ Exchange_____ Board_____

Mailed_____ Effective_____ Complied_____

Remarks: Handed questionnaire to Winkler, 2/19.
Credit committee: C. C. 3/15, $250 F. T.

Exhibit #101. PW. 5/14/28.

492

MARCH 7TH, 1927.

MESSRS. HOGREFE AND QUINN,
Happy Hour Theatre, Burke, So. Dakota.

GENTLEMEN: We are informed that you have taken over the Happy Hour Theatre at Burke, South Dakota, and in view of this we are enclosing herewith a questionnaire which we ask that you kindly sign, fill in, and return within five days.

This is very important and as much for your protection as for our information as the credit committee in this board performs the same duty as a credit man in a mercantile house. If a man's credit is not known it is necessary for him to establish it; therefore we trust that you will kindly give this information attention and return the enclosed questionnaire.

Mr. Yeager has requested that I furnish you with a list of the pictures he had under contract for this theatre, and they are as follows:

Film-booking offices	60 features; 120 comedies.
First National	59 features.
Fox	16 features; 19 comedies.
Metro Goldwyn	12 features.
Pathe	4 features.
Producers	12 features.
United Artists	10 features.
Universal	12 weeks' complete service.
Vitagraph	12 features; 9 comedies.
Famous-Players, Sioux Falls	21 features.

Yours very truly,

CREDIT COMMITTEE,
———— ————, *Secretary.*

CF:RF

Exhibit # 102. PW. 5/14/28.

493 3/9/27.

OMAHA FILM BOARD OF TRADE,
Omaha, Nebraska.

GENTLEMEN: Your letter of March 7th, 1927, received.

The Happy Hour Theatre, of Burke, was bought by Mr. Hogrefe & myself. The building was taken over from Mr. Yeager, of Burke, S. Dak., on a mortgage for closure and we purchased the building, etc., from Nye Snyder Jenks Co. (the holder of the mortgage). The name under which this theatre will in the future operate is the Community. We are not in any way connected with Mr. Yeager and do not wish to take over any of his contracts with any company of any kind. The building has been closed for some considerable time, and Mr. Yeager is at this time in Texas. Hoping the enclosed questionnaire is satisfactory.

Very truly yours,

HOGREFE & QUINN,
By R. J. Q.

Exhibit # 103. PW. 5/14/28.

494 Please answer each question, sign and return to credit committee, Omaha Film Board of Trade, Omaha, Nebr.

Date ————

1. Name of Theatre: Community Theatre. Street Address———— City and State: Burke, So. Dakota.
2. Name of person, firm or corporation operating theatre (if individual, give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): H. Hogrefe & R. Quinn. Name of individual or individuals authorized to sign contracts————
3. Is theatre owned or leased: Owned. If leased state expiration date of lease———— and name of lessee———— If owned state name of owner————
4. On what date was theatre taken over: Feb. 3, 27. Place where and date of recording bill of sale————

. Days open per week_____ Changes per week_____
Sunday shows_____ Seating capacity of theatre: 350.
Admission prices: 10 & 25. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): Shows & pictures.
6. Condition of projection machines: Good. Make_____ Model: Motiograph, 1–2 year. Number of machines_____
7. Name theatres heretofore conducted, stating location of each: None.
495 (If answer to this question is "none," state nature of previous business and where conducted): See attached letter.
8. Bank references: Burke State Bank & American State Bank.
9. Other references: R. G. Dauss, mayor of city.
10. Specify contracts for film service made by the previous owner and if they will be assumed and completed:
Name of distributor; date of contract; number of pictures unplayed: Nothing known about previous contracts.
The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.
(Signature) HOGREFE & QUINN, *Owner.*
If the answer to question 10 is "Yes," sign the following: The undersigned hereby agrees to assume and fully perform each of the above listed contracts for film service at the above named theatre.
(Signature) ——— ———.

Exhibit #104. PW. 5/14/28.

496 [Copy]

FAMOUS PLAYERS LASKY CORPORATION,
318 So. Main Ave., Sioux Falls, S. D., May 3rd, 1927.

Mr. G. B. WIGGINS,
Sec. Film Board of Trade, Minneapolis, Minn.

DEAR MR. WIGGINS:

Under date of April 25th, you wrote us regarding the situation at S. Dak.

We had something like 25 pictures under contract here since October 19th, 1924, and have never been able to get them played, because under a film board ruling Mr. Yeager's service was suspended and it seemed that every company got their product played but us.

Mr. Yeager, we understood, left the country some time ago, and Messrs. Hograffe & Quinn started up the theatre, but according to investigation had nothing to do with Yeager. In view of the fact that our prints were so old on our contract that we could not serve them, we have been replacing these pictures with others, but have not secured as many dates as we had pictures under contract and as listed with your board at the time Mr. Yeager's service was suspended so that we have considered it a spot booking in lieu of existing contracts, rather than selling new business.

We have no approved contract for additional pictures and we are willing to discontinue serving until the account is cleared, but we have had a very raw deal from Mr. Yeager, and we took this up with your board several times in the past and we were informed that Mr. Yeager had deposited money with various organizations to insure service, and yet, while I am unable to prove it, yet I believe that this money was in the form of a check which was never cashed.

We have not intended to violate any ruling here whatsoever and will run chances of a new sale in case they are cleared. Let me hear from you further regarding this matter please.

Very truly yours,

D. H. RULIFFSON,
Branch Manager.

DHR.
Exh. 105. PW. 5/14/28.

497

MAY 3RD, 1927.

Mr. HARRY MELCHER,
Fox Film Corporation, Omaha, Nebraska.

DEAR MR. MELCHER: We wrote Mr. Levy on April 21st, asking that he advise disposition of 24 additional features and 33 comedies sold to the Happy Hour Theatre, Burke, South Dakota.

Please let us have a reply immediately.

Yours very truly,

OMAHA FILM BOARD,
——— ———, *Secretary.*

CF:RF.
Exh. 106. PW. 5/14/28.

498

MAY 6, 1927.

HOGREF & QUINN,
Community Theatre, Burke, S. D.

GENTLEMEN: Because of a ruling of the film board of trade, it has become necessary that we eliminate 24 features and 33 comedies on the 1926–27 contract.

In order to complete our records, will you kindly sign three copies of the attached rider in ink, returning them to us.

Please retain the fourth or pink copy for your own file.

Yours very truly,

HARRY MELCHER,
Branch Manager.

HM SG.
Exh. 107. PW. 5/14/28.

499 *Service report data*

Date, 8/31–Decembr.

Casey Ta. (Town & State) O. H. (Theatre) Wahe & Skellinger. (Owner)

Mr. W. E. Mohasin. (New owner)

Distributor	Serving	Contract date	Signed by—	Features	Comedies	Recd.	Mailed	Not O. K.
Educational								
Enterprise			F. Wahe	BPO Red Kimona (already played this).				
Famous Players								
F. B. O.								
First National								
Fox Film Corp.								
Liberty								
Metro-Goldwyn								
Midwest Distb.								
Pathe								
Producers Distb.								
United Artists								
Universal								
Vitagraph, Inc.	$112.50		H. Wahe	7				

O. K., 11/29/27, per telephone conver.

Complaint_____ Exchange_____ Board_____

Mailed_____ Effective_____ Complied_____

Remarks: _____

Credit committee:
DMCC CIB, 150.00, 9/21.
DMCC O. K., 10/17/27.
CC O. K., 11/30/27.

Exhibit #110. PW. 5/14/28.

500 Please answer each question, sign, and return to credit committee, Omaha Film Board of Trade.

OMAHA, NEBR., (date) *Sept. 8th* 27.

1. Name of theatre: A-Muse-U Theatre. Street address: _____ City and State: Casey, Iowa.
2. Name of person, firm, or corporation operating theatre (if individual, give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): W. C. Mohnsen. Name of individual or individuals authorized to sign contracts: _____
3. Is theatre owned or leased: Leased; if leased, state expiration date of lease: _____ and name of lessee: _____ If owned, state name of owner: _____
4. On what date was theatre taken over: July. Place where and date of recording bill of sale: _____
5. Days open per week: _____ Changes per week: _____ Sunday shows: _____ Seating capacity of theatre: 300. Admission prices: Fluctuate. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): Dances; shows.
6. Condition of projection machines: Perfect. Make: Powers. Model: _____ Year: _____ Number of machines: _____
7. Name theatres heretofore conducted, stating location of each: None. (If answer to this question is "none," state nature of previous business and where conducted): Dance orchestra.
8. Bank references: Citizens Savings Bank, Casey.
9. Other references: C. C. Loft, Des Moines; any business in Casey.

10. Specify contracts for film service made by the previous owner and if they will be assumed and completed: Name of distributor: Vitagraph; date of contract: ----------; number of pictures unplayed: 7 features. No contracts will be assumed.

The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.

(Signature) W. C. MOHNSEN, *Lessee.*

If the answer to question 10 is "Yes," sign the following: The undersigned hereby agrees to assume and fully perform each of the above listed contracts for film service at the above-named theatre.

(Signature) ——— ———.

Exhibit 109. P. W. 5/14/28.

501 OMAHA, *Sept. 2nd, 1927.*
(Date)

SECRETARY OMAHA FILM BOARD OF TRADE,
Film Exchange Building, Omaha, Nebr.

Our records indicate we have contracts with opera house at Casey, Iowa, H. Wahe.
(Theatre) (Town and State) (Owner)

Pictures under contract	Contract date	Dates set (if any)
7 features	1/25/27	
Total amount of unconsummated business, $52.50		

Yours very truly,

E. A. BELL,
Manager Vitagraph, Inc., Exchange.

Above contracts taken over by ----------
on----------(Date.)

Exhibit # 111. PW. 5/14/28.

502 OMAHA, *September 3, 1927.*
(Date)

SECRETARY OMAHA FILM BOARD OF TRADE,
Film Exchange Bldg., Omaha, Nebr.

Our records indicate we have contracts with Opera House at Casey, Iowa, F. Wahe.
(Theatre) (Town and State) (Owner)

Pictures under contract	Contract date	Dates set (if any)
Red Kimono	5-1-27	Sept. 7th and 8th.
The above dates were set in by Mr. Mohnsen.		

Yours very truly,

——— ———,
Manager Enterprise Film Corporation of Omaha Exchange.

Above contracts taken over by
----
on----------(Date.)

(Exhibit 112. P. W. 5/14/28.)

503 SEPT. 13TH, 1927.

Mr. WALTER C. MOHNSEN,
Amuse-U Theatre, Casey, Ia.

DEAR MR. MOHNSEN: We are in receipt of the contracts given our Mr. Fanger, but, due to the fact that you have not as yet been cleared by the Omaha Film Board of Trade, we are unable to accept same.

We are, however, holding these contracts, and just as soon as the film board has okey'd your account we will be glad to forward them to our home office for approval, providing, of course, that this is satisfactory to you.

We are mighty sorry, Mr. Mohnsen, that we cannot put these contracts through immediately, but we know you appreciate the fact that we must abide by the film board of trade rulings.

Yours very truly,

UNITED ARTISTS CORPORATION,
J. S. ABBOSE, *Sales Manager.*

H.
cc—Miss Foley.
Exh. 113. P. W. 5/14/28.

504 OCTOBER 7TH, 1927.

Miss MATTHEWS: I am wondering who is serving the Amuse-U Theatre at Casey, Iowa. The only exchange here holding a contract is Vitagraph, which contract has not been assumed. Either Mr. Mohnsen, who is the new owner, assumed some contracts over at Des Moines or some one has sold him in violation.

Would appreciate your checking this up.

Sincerely,

OMAHA FILM BOARD OF TRADE,
——— ———, *Secretary.*

Exh. 114. P. W. 5/14/28.

505 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building, Des Moines, Iowa, October 17, 1927.

DEAR MISS FOLEY: With further reference to the exhibitor at Casey, Iowa, this man to-day appeared before our credit committee.

Mr. Mohnisen informed us that Mr. C. L. DeBoldt, who signed the Warner contract, was mentally incompetent, and I believe he is now committed to an asylum. As this board functions, only immediately preceding owner's contracts are considered. Therefore, as we operate Mr. Mohnisen would only be obligated to take over contracts from Wahle and Skellinger.

In view of these facts our board has established credit and we will carry this account under Omaha until your committee has passed upon the transaction.

May we hear from you as to the opinion of your credit committee?

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exh. 115. P. W. 5/14/28.

506 OCTOBER 20TH, 1927.

MISS LITTELL: With reference to your letter of October 17th and the exhibitor at Casey, Iowa.

Through some misunderstanding you seem to believe that Warner Brothers contract was signed by some previous owner other than Wahe or Skellinger.

Warner Brothers contract for 7 features, which is the only contract outstanding here, was signed by Mr. H. Wahe and not the Mr. DeBoldt whom you describe as being mentally incompetent. Therefore, we are acting according to the system by which your board operates in asking Mr. Mohnisen to take over these 7 features which were signed by Mr. Wahe the immediately preceding owner.

Although Mr. Mohnisen has sent in a questionnaire, he refuses to take over these Warner Brothers pictures, and Mr. Comer of Warner Brothers has kept a close follow-up and will advise me as soon as he can make an arrangement with Mr. Mohnisen.

I believe in view of the above you will concur in the opinion of this board—that Mr. Mohnisen should be kept on our confidential credit information list, especially in view of the fact that only 7 features remain to be taken over.

Sincerely,

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

P. S.—I might further add that Warner Brothers' contract is dated in January of this year, and that our records show no Charles DeBoldt as having ever operated this theatre.

Exhibit 116. P. W. 5/14/28.

507 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building, Des Moines, Iowa, October 21, 1927.

DEAR MISS FOLEY: With further reference to Casey, Iowa, credit has been established at this board; however, we will carry under Omaha until cleared by you.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exh. 117. P. W. 5/14/28.

508 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210 11 Iowa Building, Des Moines, Iowa, October 24, 1927.

DEAR MISS FOLEY: In talking with Mr. Monahsen, the new owner of the opera house at Casey, Ia., he informed me that he had assumed the outstanding contracts of Warner Brothers at Omaha.

He further informed me that the first contract Warner Brothers submitted to him was signed by Mr. De Host for about 60 pictures.

This was probably an error, as they later submitted a contract signed by Wahle and Skellinger for about ten pictures.

Mr. Monahsen informed me that at the time he assumed the ten pictures of Warner Brothers they attempted to sell him additional product. This is merely for your information.

Sincerely yours,

AUDREY S. LITTELL, *Secretary.*

Exhibit 118. P. W. 5/14/.

509 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building, Des Moines, Iowa, October 26, 1927.

MISS FOLEY: Replying to your letter of October 25, 1927, concerning Casey, Iowa.

When this account first appeared upon our credit information list, Mr. Copeland, of Famous Players, advised me that his salesman erroneously took a contract at that town, but the application was immediately rejected.

F. B. O. took a contract last week, but only to the extent of the old product which was outstanding with Wahle and Skellinger.

Sincerely yours,

(Signed) LEONE MATTHEWS,
Secretary.

P. S.—I heretofore advised you that only First National and Universal had outstanding contracts with this theatre, but F. B. O. later discovered that they had contracts with Wahle & Skellinger, and we have checked these contracts and found them to be Okey.

Exhibit #119. PW. 5/14/28.

510 OCT. 29, 1927.

MISS LITTELL: With reference to Mr. Monahsen, who has taken over the opera house at Casey, Iowa, Mr. Bell, branch manager of the Vitagraph here, whose seven unplayed features are holding up this man's credit at this board, advises me that when he attempted to get some sort of a settlement from Mr. Monahsen on these pictures, Mr. Monahsen refused to talk to him, stating he had promised to talk to a First National salesman first. Mr. Bell states that at no time during his conversation with Mr. Monahsen did he attempt to sell Mr. Monahsen a contract for new product. He did say, however, that he offered to give Mr. Monahsen seven new pictures for the old pictures on their contract.

It does not seem that we can clear this account until something is done about the Vitograph pictures.

If you will talk with Mr. Monahsen again, probably you could explain the situation to him, so that we can get some action on it.

Sincerely,

——— ———, *Secretary.*

RF/EW.

Exhibit #120. PW. 5/14/28.

511 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
201–11 Iowa Building, Des Moines, Iowa, October 31, 1927.

DEAR MISS FOLEY. With reference to Casey, Iowa, when I talked with Mr. Monahsen I advised him that if he would make satisfactory arrangements with Warner Brothers we could establish credit, and he advised me he would do so.

If I have an opportunity to talk with him again, I shall be glad to do all I can to get him to make arrangements with Warner Bros.

Sincerely yours,

AUDREY LITTELL, *Secretary.*

Exhibit 121. PW. 5/14/28.

512 NOVEMBER 5TH, 1927.

Miss MATTHEWS: Upon receipt of your letter this morning I again got in touch with Warner Brothers concerning Casey, Iowa, and they advised me that nothing has developed as yet.

I am keeping a close follow-up on this and will keep you advised.

Sincerely,

——— ———.

Exhibit 122. P. W. 5/14/28.

513 11/30/27.
(Date)

Miss CLARE FOLEY,
Secretary, Omaha Film Board of Trade,
Omaha, Nebr.

Contract for Opera House, Casey, Ia., signed by H. Wahe, was (Original owner)
rewritten to _____ on Nov. 25th (date). This transfer
(New owner)
or new contract represented 15 Features _____ Comedies and
(No.) (No.)
involved $112.50.
(Revenue)

VITA EXCHANGE.
By ——— ———

Exhibit 123. P. W. 5/14/28.

9/2/27.
(Date)

Miss CLARE FOLEY,
Secretary, Omaha, Film Board of Trade, Omaha, Nebr.

Contract for Opera House, Casey, Ia., signed by F. Wahe,
(Theatre) (Town & State) (Original owner)
was taken over by Mohnsen, on 8/31/27 (date). This transfer or
(New owner)
was rewritten to
new contract represented one features _____ comedies and involved
(No.) (No.)
percentage contract.
(Revenue)

ENTERPRISE EXCHANGE,
By E. SCHWARTZ.

Exhibit 123. A P. W. 5/14/28.

514 *Service report data*

(Date) 1/17 Bell-Vita.

Elkadey, Ia. (Town & State) | Rivoli (Theatre) | H. Veen Schoten (Owner)

H. H. Hall (New owner)

Distributor	Serving	Contract date	Signed by—	Features	Comedies	Rec'd.	Mailed	Not O. K.
Assc. Exhibitors								
Educational								
Enterprise Dist								
Famous Players								
Film Booking Of								
First National								
Fox Film Corp								
Liberty	82.00		Mr. Veenschoten.	9	CC 3/26 gave 7 days; 9 to get cleaned up.	Exh.		O. K. 3/29.
Metro-Goldwyn								
Pathe Exchange								
Premier Pictures								
Producers Dist								
United Artists								
Universal								
Vitagraph, Inc	197.50		T. H. Veenschoten.	16	15			O. K. 1/31

Complaint _____ Exchange _____ Board _____
Mailed _____ Effective _____ Complied _____
Remarks: _____

Credit committee.
CC $250 CJR 1/25.
Des. by CC. O. K. per phone, 3/8.
CC O. K. 3/24.
Exhibit 124. PW. 5/14/28.

515 Please answer each question, sign and return to credit committee, Omaha Film Board of Trade, 6 Film Exchange Building, Omaha, Nebr.

1. Name of theatre: Rivola.
   Street address: Elkader, Iowa.
   City and State: _____.
2. Name of person, firm, or corporation operating theatre (if individual give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): Harold H. Hall.
3. Is theatre owned or leased: Leased. If leased, state expiration date of lease: Mar. 1st, 1930. And name of lessee: Joe Miller. If owned, state name of owner _____.
4. On what date was theatre taken over: 1–15–27. Place where and date of recording bill of sale: _____.
5. Seating capacity of theatre: 245. Admission prices: 10–30. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): Pictures only.
6. Condition of projection machines: Good. Model: _____ Year: _____.
7. Name theatres heretofore conducted, stating location of each: None. (If answer to this question is "None," state nature of previous business and where conducted): Oil business, Scranton, Iowa.
8. Bank references: Bank of Scranton, Iowa; Farmers State, Scranton.
9. Other references: First National Bank, Elkader, Iowa.

10. Specify contracts for film service made by the previous owner and if they will be assumed and completed:

Name of distributor	Date of contract	Number of pictures unplayed	Number of pictures undated

516 The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above-named Film Board of Trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.

(Signature) HAROLD H. HALL,
(*Lessee.*)
*(*Owner.*) Strike out one.

If the answer to question 10 is "Yes," sign the following: The undersigned hereby agrees to assume and fully perform each of the above-listed contracts for film service at the above-named theatre.

(Signature) ——— ———.

Exh. 125. PW. 5/14/28.

517 FEBRUARY 9TH, 1927.

Mr. HAROLD H. HALL,
Rivola Theatre, Elkader, Ia.

DEAR MR. HALL: This will acknowledge receipt of the questionnaire which you have returned.

I note you did not fill in question 10, and for your information will advise that there are contracts with Liberty and Vitagraph.

Yours very truly,

CREDIT COMMITTEE,
——— ———, *Secretary.*

CF:RF.
Exhibit #126. PW. 5/14/28.

518 RIVOLA THEATRE

Where the pick of the pictures are shown. Harold H. Hall, manager

ELKADER, IOWA, *3/15/26.*

CREDIT COMMITTEE,
Omaha Film Board of Trade, Omaha, Neb.

GENTLEMEN: On going to Des Moines a few days ago I was told that I had not been released by the credit committee of the Omaha Board of Trade.

Upon inquiry I was told that the reason for this was because I had not accepted a contract made by the Liberty Film Co. and sold to Mr. Veenshoten, the party that I bought the theatre here from. It is certainly a surprise to me that the Liberty Film Co. would attempt to hold me responsible for a thing of this nature. I made no agreement with Mr. Veensnoten to accept any contracts that he had

Altho I told him that I would assume whatever contracts that I felt I could use incidently, I have assumed all contracts that he had with the exception of Liberty. I have done every thing with each co. that I have de'lt with to be fair and reasonable. I told Mr. Veenshoten as soon as we looked the contracts over that I would not accept the Liberty contract. He assured me that would be all right and that I did not need to accept it. Now it seems to me that the proper man for Liberty to look to in regard to this matter would be Mr. Veenshoten.

Now I wish to ask in all fairness to be released at once.

Yours very truly,

(Belongs before 264 PW.)
Exhibit #127. PW. 5/14/28.

519 Office of secretary, Mary Benjamin. Phone, Market 2051

DES MOINES FILM BOARD OF TRADE,
519 Iowa Bldg., Des Moines, Iowa, March 18, 1927.

Miss CLARE FOLEY,
Sec'y, Film Board Trade,
Omaha, Nebr.

DEAR MISS FOLEY: There seems to be some trouble in regard to theatre at Elkader, Iowa, which house changed management some time ago. The new management, we understand, has assumed all contracts, with the exception of nine pictures with the Liberty film, which he was in no way obligated thru his taking over the theatre, but on all other contracts we understand was agreeable with the new management.

He has been cleared thru the credit committee here, but we understand on account of his not assuming the contracts your credit committee refused to clear same.

For your information the new owner has become very much put out and has referred the matter to a local attorney, and it is an action that we can not afford to permit any exhibitor to take, and particularly in a case of this kind where the exhibitor willingly assumed all contracts and pictures, but with one exception, and we believe it advisable for your board to give this matter proper consideration and give clearance of same.

Very truly yours,

———— ————, *President.*

WEB:M.
Exhibit #128. PW. 5/14/28.

520 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building, Des Moines, Iowa, November 9, 1927.

DEAR MISS FOLEY: With further reference to H. F. Hull, Lytton Theatre, Lytton, Iowa.

During the interval elapsing between the writing to your office, relative to the prorating of the service in Lytton and your reply, the exhibitor signed the questionnaire sent by this board and assumed all contracts with the exception of Pathe.

It was our intention to have a credit-committee meeting the fore part of this week and prorate the Pathe service along with the outstanding service in Omaha; however, we were unable to do so, and Mr. Phillips, the local Pathe manager, advised us yesterday that he was willing to cancel his contract.

Accordingly, we do not believe there is anything which we can now do at this board, inasmuch as there are no outstanding unassumed contracts.

Sincerely yours,

(Signed) LEONE MATTHEWS,
——— ———, *Secretary.*

Exhibit #133. PW. 5/14/28.

521

Service report data

(Date) 9/27/27.

Lytton, Ia. (Town & State) | Lytton (Theatre) | Mrs. O. M. Jones. (Owner)

H. F. Hull (Oct. 1) (New owner)

Distributor	Serving	Contract date	Signed by	Features	Comedies	Recd.	Mailed	Not O. K.
Renown			Mrs. Jones	2 (Enterprise).				
Educational								
Enterprise								
Famous Players								
F. B. O.								
First National								
Fox Film Corp.								
Liberty			Mrs. B. M. Jones.	12				
Metro-Goldwyn								
Midwest Distb., handed out of Des Moines.								
Pathe								
Producers Distb.								
United Artists			Mrs. B. M. Jones.	2				O. K. 9/29.
Universal								
Vitagraph, Inc.			Mrs. B. M. Jones.	14			1	O. K. 12/17/27.

Complaint——— Exchange——— Board———

Mailed——— Effective——— Complied———

Remarks———

Credit committee:
Credit O. K. 2/20/28.
Mr. Monsky on C. C. committee said O. K. to establish credit without taking over 12 features from Liberty.

Exh. 134. PW. 5/14/28.

522 LYTTON THEATRE CO.,
Lytton, Iowa, Sept. 27, 1927.

This is to certify that in taking over the management of Lytton Theatre I will assume the unexpired film contracts entered into by Mrs. B. M. Jones with the various film companies.

H. F. HULL.

Exh. 135. PW. 5/14/28.

523 Please answer each question, sign, and return to credit committee, Omaha Film Board of Trade, Omaha, Nebr.

(Date) OCT. 1ST, 1927.

1. Name of theatre: Lytton. Street address: _____. City and State: Lytton, Ia.
2. Name of person, firm, or corporation operating theatre. (If individual, give full name; if partnership, name each partner; if corporation, state full corporate name and names of officers): _____. Name of individual or individuals authorized to sign contracts: H. F. Hull.
3. Is theatre owned or leased: Leased. If leased, state expiration date of lease: Oct. 1, '28; and name of lessee: H. F. Hull. If owned, state name of owner: Lytton Opera House Co.
4. On what date was theatre taken over: Oct. 1st. Place where and date of recording bill of sale: _____.
5. Days open per week: Two. Changes per week: Two. Sunday shows: Yes. Seating capacity of theatre: 300. Admission prices: 25¢. Policy (state if motion pictures only; vaudeville and pictures; road shows and pictures): One free night a week.
6. Condition of projection machines: Good. Make: Simplex. Model: _____ Year: _____. Number of machines: 2.
7. Name theatres heretofore conducted, stating location of each: Lytton Theatre. (If answer to this question is "None," state nature of previous business and where conducted): _____.
8. Bank references: Farmers Savings & Lytton Savings.
9. Other references: Any business men in town.
10. Specify contracts for film service made by the previous owner and if they will be assumed and completed: _____.

524 Name of distributor	Date of contract	Number of pictures unplayed	Number of pictures unplayed
Liberty Film Co.		12 features	
Midwest Distb. Corp.		13 features	
United Artists		2 features	
Vitagraph		14 features	
Renown Pictures		2 features (taken over from Enterprise).	
First National		47 features	
Film Booking Office		7 features	
Fontenelle Feature films		60 features	
Columbia Pictures		(Number not shown) features	
American Dist. Corpn.		3 features	

The undersigned represents and warrants that the answers to the above questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at this theatre.

(Signature) _____ _____,
Owner. / *Lessee.* } Strike out one.

If the answer to question 10 is "Yes," sign the following:
The undersigned hereby agrees to assume and fully perform each of the above-listed contracts for film service at the above-named theatre.

(Signature) _____ _____.

Exh. 136. PW. 5/14/28.

525

LYTTON, IA., *Oct. 6/27.*

OMAHA FILM BOARD OF TRADE,
Omaha, Nebr.

DEAR SIRS: I have filled out the questionnaire to the best of my ability all except the signing. I can't see what good it would do me to sign it, as I have only rented this theatre here for the period of a year and it would be impossible to handle all the films listed and that I have added to it in the time I will be manager. I may rent it again, but if I spend a year clearing up old contracts I feel that I am more than doing my part. I did sign a statement for Mrs. Jones that I would take over her contracts, but all the contracts that were spoken about were those with Fontenelle and Film Booking Office; she never advised me that there were other contracts to be filled. In addition I signed up with the First National and United Artists to keep my word good. Now, all these other pictures show up to be run that were not explained to me, and it would be impossible even if I did wish to do so to run all these pictures during my term of contract with the Opera House Co. I have more now that I signed up with to keep me running my full time (First Natl. Film Booking Office and Fontenelle) without being expected to buy up about forty-five to sixty more pictures than I have dates to show them.

There are only two show nights here a week, so you see that makes about sixty extra pictures. I want to treat everybody right to the best of my ability. I understand that the Fontenelle people are not on the film board and have been advised my Mrs. Jones and others that all I need to do is to write to them and cancel my contract and they can do nothing about it, but I don't know as you are aware very much about the film business, but you are also aware that I had nothing to do with the booking of all these pictures. If I had booked these up myself and were trying to get out of it it would be different, but I have had a lot of stuff wished on me that I can't get rid of during my lease and I wish you would advise me how to come out from in under such a mess.

Very respectfully,

H. F. HULL,
Manager Lytton Theatre.

Exh. 137. PW. 5/14/28.

526

OCT. 15TH, 1927.

MISS LITTELL: I have received the following letter from Mr. H. F. Hull, new owner of the Lytton Theatre, Lytton, Iowa. You will probably want to present same at your next credit committee as there is considerable service out of Des Moines.

"Your letter of the 10th; I did misunderstand your other letter, I was under the impressions that in my case where the former manager went and contracted for a big bunch of pictures that couldn't

be shown during the ensuing year that I would be under obligations to cancel my contract with the independent concerns in order to fill out the unexpired contracts with the other companies; this didn't look fair to me, as a third of our shown nights are free nights and the other companies who are members of the film board would not sell stuff to be shown at free shows.

As far as me being able to change the order of things here in town and cut out the free shows, it would be an impossibility on my part, as the merchants here want a free show every Wednesday night as a trade getter, and it sure brings the people to town on that night; the owners of the Lytton Theatre would not rent to any party unless they would agree to put on the free shows as heretofore, and it was agreed that I should keep on with the same service as regards free shows as has been done in the past.

I can't see why this matter can't be arbitrated and sufficient number of pictures from all who Mrs. Jones had contracted for, both independent and film board members, so as to let me get this matter cleaned up within the year that I have the theatre rented. This would give me a clean slate to start another year's business if I concluded to run it another year. I wan intending to try and rent it for a term of five years after I had finished my first year if I made any kind of a go of it, but as it now stands whoever would rent it again next year would still have to take over all these old contracts and show pictures that were old and have to run his theatre at a loss. I know that I wouldn't want to keep on trying to run and have all these booking offices after me all the time for dates that I couldn't fill right off the bat. Here is another thing I want to impress on your mind in going in to this deal is this, that if I hadn't taken over this theatre at this time it would of been dark, as Mrs. Jones was some three hundred thirty-five dollars behind with her rent, and the management of the opera house demanded a settlement; she couldn't raise the money and turned over her movie picture machine in settlement of the rent. Now these pictures that are under contract couldn't of been handled by her as they wouldn't have let her continue running the opera house; now why should I be made the goat of all her abundance of contracts?

I did agree with her to take over her contracts, but the only
527 contracts she told me she had were the ones with Fontenelle and Film Booking Office; I took on forty some odd with the First National and two with United Artists because I figures I could play them out within my year and I wanted to do what was right. Now if you stop to look at it from my light, there wouldn't been any of these contracts taken over if I hadn't rented it, because any one of experience would not of taken it over under the conditions it was in at the time Mrs. Jones quir, as they would been better posted than I wan and wouldn't of gotten into any deal of this kind. I wish you would see that I am not imposed upon by any of these film booking offices, as this deal was none of my doings; all I am trying to do is to get straightened out to the best interests of every-

one concerned. With this interpretation will you try and handle me."

This for your information and consideration.

OMAHA FILM BOARD OF TRADE,
———— ————, *Secretary.*

Exh. 138. PW. 5/14/28.

528 Leone Matthews, secretary. Telephone, Market 2051

DES MOINES FILM BOARD OF TRADE,
210–11 Iowa Building,
Des Moines, Iowa, October 17, 1927.

DEAR MISS FOLEY: This is to acknowledge receipt of your letter of October 15, 1927, concerning the new owner of the Lytton Theatre at Lytton.

The following pictures are outstanding at this board, and we have advised the exhibitor accordingly.

Pathe, 17 features; Universal, 2 features, 7 comedies; First Natl., 44 features; F. B. O., 9 features, 14 comedies.

Our credit committee is willing to cancel out a portion of all outstanding contracts sufficient to bring this exhibitor's service down to not more than one year.

We, of course, do not know what pictures are outstanding at Omaha, but if you will advise us of the opinion of your credit committee after considering all contracts outstanding both here and at Omaha I will submit their findings to our committee.

This procedure, we realize, may not be approved by your committee, but we know of no other way to assist this exhibitor if he is overbought to the extent he states.

Sincerely yours,

LEONE MATTHEWS, *Secretary.*

Exh. 139. PW. 5/14/28.

529 Nov. 1, 1927.

MISS LITTELL: At our credit committee meeting yesterday the men on my committee decided that you were correct in that the picture under contract for the Lytton Theater, Lytton, Ia., should be out.

The service contracts which were in Omaha are as follows:

Renowned, two features; Liberty, twelve features; Midwest Dist., thirteen features; Vitograph, fourteen features; United Art, one feature, which is booked for Nov. 13th and 14th.

It will be okay for you to cut this service in proportion, so that there will be only a year's service between the Des Moines and Omaha board.

Of course the Fontenelle contract and American Picture Corp. contract are not to be considered. As soon, therefore, as we hear from you on this, we will notify our exchanges to cut the pictures accordingly.

If this plan works out, the account should be credited simultaneously by the Des Moines-Omaha board.

Please let us hear from you.

Yours very truly,

——— ———, *Secretary.*

RF/MW.

Exhibit #140. PW. 5/14/28.

530 *Government Exhibit 24*

No. 87.

CREDIT COMMITTEE, DALLAS FILM BOARD OF TRADE

(Confidential)

(Date) 7/9/27.

Explanations: "C. I. R.," credit information requested or refused; "F. T.," transferred or sold to avoid existing contracts; "Pndg.," credit report received—10 days from date of receipt allowed committee to investigate (spot contracts for 10-day period in order unless security recommended); "O. K.," transfers where all contracts assumed or credit of new owner O. K. or O. K. with security as recommended.

Send "members' statement" to secretary immediately, advising status of your contracts when transfers appear hereon and you are affected. If your contracts are being assumed, forward assignment to purchaser.

Theatre	Town	Contracting exhibitor	Purchaser	Key letters	Cash security
*Olympic-Royal	Floydada	T. L. Kennedy	R. W. Simpson	C. I. R.	
*Brown's Pl. Ho	Pleasanton	C. H. Brown	P. A. Vance	C. I. R.	
*Gem	Wichita Falls	M. Pois	Dent Theatres	C. I. R.	
Rex	Lubbock	E. L. Dye	H. T. Hodge	C. I. R.	
Home	Valley View	E. F. Knight	W. M. Davis	C. I. R.	
Camp Wood	Camp Wood	E. V. Raney	Tom McGowan	C. I. R.	
Star-Arcade	Denison	B. Peebles	Dent Theatres	C. I. R.	
National	Waco	W. F. Box	(?)	C. I. R.	
Vega	Vega	C. H. Yates	Farmer Jones	C. I. R.	
Queen	Best	Scott & Son	Mrs. C. W. Scott	C. I. R.	
Crown	Cushing	L. D. Denny	J. B. Parnell	C. I. R.	
Lynn	O'Donnell	Henderson & White	Lindsey Thent	C. I. R.	
Dixie	Giddings	M. R. Jenke	Lehman Bros	C. I. R.	
Garrison	Garrison	A. A. Turner	C. R. Currie	C. I. R.	
Nickel	Waco	W. F. Sonneman	Abe Levy	C. I. R.	
Marvel	Clyde	W. F. Kirk	Mrs. Lee Irwin	C. I. R.	
Rex	Christoval	W. C. McGrew	(?)	C. I. R.	
Pantages	Ft. Worth	State Am. Co	Liberty Am. Co	C. I. R.	
Star	Tyler	M. V. Baccus	White & Ratcliff	C. I. R.	
Pioneer	Pioneer	J. T. Clark	J. W. Cooper	C. I. R.	
May	Three Rivers	Geo. May	Hall Bros	C. I. R.	
Palace	Baytown	A. C. Hale	G. D. Hawkins	C. I. R.	
Coahoma-Wye	Coahoma	L. V. Yates	C. D. White	C. I. R.	
Liberty	Carrolton	Hightower	G. W. Lloyd	C. I. R.	
Prince	Princeton	C. L. Hilger	G. D. Woodall	C. I. R.	
Bandera	Bandera	Warren Hunter	J. C. McMains	C. I. R.	
*Elaine	Sinton	P. A. Preddy	Hall Bros	O. K.	
*Texas	Grand Prairie	J. & S. Walker	J. L. Wolfenbarger, jr.	O. K.	
*Fawn	Ft. Worth	L. Westerfield	S. D. Archibald	O. K.	
*Colonial	Dallas	Howell Bros	M. S. White	O. K.	
*Palace-Rialto	San Antonio	Alamo Am. Co	Alamo Am. Co		
		L. Santikos	Wm. Epstein of Commerce Realty.		$1,000.00

NOTE.—Floydada: All contracts to be assumed. Advice R. W. Simpson, Paducah. Pleasanton, Paramount, Universal, & Fox contracts provide for cancellation in event of sale. Pathe status not known. Advise. Wichita Falls: No information. Advise with member's statement. Sinton: 18SA, 4 & 7 assumed. Not assuming 2-3-9-22-19. Grand Prairie: Assuming contracts. Note 2-3-18-13-23-7. Advise. Fawn, Ft. Worth: Assuming all contracts. Advise.

(Over—important)

531 Colonial, Dallas: Not assuming contracts.

Re Palace, Rialto, San Antonio. Epstein advises Alamo Amus. Co. still exists & owns these theatres; however, Epstein signs as gen'l mgr. of Alamo Am. Co. Epstein, Aztec, and Commerce Realty in default of arbitration award. The credit committee, under these circumstances, recommends a $1,000 deposit on any new applications for service in either Palace, Rialto, or Aztec whether signed Alamo Am. or Commerce Realty with Epstein's signature. Members are aware of deposits which are authorized on Aztec contracts by virtue of being in default of board's award. Service may be resumed on the placing of satisfactory deposit on existing contracts only.

Be sure to send member's statement on Grand Prairie & Fawn, Ft. Worth.

PREVIOUSLY O. K., WITH SECURITY DEPOSITS RECOMMENDED

Majestic	Alvord "A."
Dreamland	Cleburne "A."
Palace-Ritz	Colorado (see PP 5, Bn. 257.)
Palace	Conroe "B."
Palace	Daingerfield "A," (S. G. Newsome, jr.)
Pastime	Estelline "D."
Hightone	Flomot "B."
Paynes	Glenrose "D."
Monarch	Georgetown "D."
Crescent	Garland "D."
Strand	Gorman "D."
Idle Hour	Hempstead "D."
Hidalgo	Houston "A."
Dreamland	Lakeview "A."
Rodriquez clo	Laredo "D."
Ritz	Malakoff "D."
Pioneer	Pioneer "B."
Joyland	Stamford "A."
Rae	Tatum "B."
Star clo	Tyler "B" (Baccus).
Gem	Valera "A."

Send in member's statement.

532 *Defendant's Exhibit A*

UNITED STATES OF AMERICA v. FIRST NATIONAL PICTURES, INC., ET AL.

[Defendant's Exhibit No. 1]

Statement showing total number of transfers of theatres, amount involved in uncompleted contracts, etc., 1926, 1927, and 1928

	Year	Number	Amount
Number of transfers	1926	3,438	
	1927	3,950	
	1928	*4,612	
*There were 422 transfers in 1928 in which there were no uncompleted contracts for purchasers to assume.			
Aggregate amount of rentals involved in uncompleted contracts of transferred theatres	1926		No figures.
	1927		$7,297,374.13
	1928		9,843,970.23
Number of purchasers assuming all or part of uncompleted contracts of previous exhibitors	1926	2,052	
	1927	2,425	
	1928	2,304	
Amount of rentals of uncompleted contracts of previous exhibitors assumed all or in part by purchasers	1926		4,482,808.26
	1927		5,185,826.25
	1928		5,798,112.70
Number of purchasers refusing to assume any part of uncompleted contracts of previous exhibitors	1926	No figures	
	1927	1,237	
	1928	1,653	

Defendant's Exhibit A—Continued

[Defendant's Exhibit No. 1]

	Year	Number	Amount
Amount of rentals of uncompleted contracts of previous exhibitors no part of which was assumed by purchasers	1926	----------	No figures.
	1927	----------	2,111,547.88
	1928	----------	4,045,857.53
Favorable credit ratings	1926	2,905	----------
	1927	3,166	----------
	1928	*4,175	----------
*Figures for 1926 and 1927 give the number of favorable credit ratings on the first report of the credit committee. Many transfers were cleared later during 1926 and 1927, but these figures are not available and so are not included in the figures given for 1926 and 1927. The figure for 1928 gives total clearings for the year, namely 4,175. Of these 3,241 were favorably reported on the first report and 934 were reported favorably later during 1928, giving the total 4,175 for 1928.			
Transfers in which credit information was refused	1926	611	----------
	1927	510	----------
	1928	*974	----------
*For a large majority of these 974 transfers credit information was furnished during 1928, so that only 183 remained on the C. I. R. list at the end of 1928.			
Transfers reported as "Fraudulent transfer"	1926	No figures.	----------
	1927	*212	----------
	1928	**175	----------
*Many of these were cleared during 1927, but figures are not available. **During the year 145 of these were cleared, so that only 30 remained on the F. T. list at the end of 1928.			

533 *Defendant's Exhibit "B"*

[Omitted in printing]

545 *Defendant's Exhibit C*

UNITED STATES *v.* FIRST NATIONAL PICTURES, INC., ET AL.

DEFENDANT'S EXHIBIT NO. 3

Credit

Statement showing for each defendant distributor in 1927 and 1928 amount involved in (1) uncompleted contracts with exhibitors transferring theatres in those years, (2) contracts assumed by purchasers all or in part, and (3) contracts no part of which were assumed by purchasers

Distributor	Amount involved in uncompleted contracts at theatres transferred		Contracts assumed all or in part by purchasers		Contracts no part of which were assumed by purchasers	
	1927	1928	1927	1928	1927	1928
Columbia Pictures Corp.	$110,641.50	$152,174.15	$71,806.50	$94,867.15	$38,835.00	$57,307.00
Educational Film Exchange	270,474.77	266,728.99	191,562.30	154,640.55	78,912.47	112,088.44
F. B. O. Pictures Corp.	551,318.52	780,163.59	392,008.50	458,531.31	189,310.02	321,632.28
First National Pictures	651,712.30	742,132.59	479,080.95	494,300.72	172,631.25	247,831.87
Fox Film Corporation	759,517.86	1,012,748.18	580,883.26	594,534.89	178,634.60	418,213.29
Metro-Goldwyn-Mayer	817,874.52	1,429,233.42	587,166.00	914,684.61	230,708.52	514,548.81
Paramount Famous-Lasky Corp.	721,074.28	1,216,144.94	539,894.07	814,652.36	181,180.21	401,492.58
Pathe Exchange, Inc.	616,323.73	1,042,310.32	409,145.50	576,480.73	207,178.23	465,829.59
Producers Distrib. Corp.	218,553.33	----------	162,166.75	----------	56,386.58	----------
Tiffany Productions	98,860.90	196,997.85	62,612.40	95,329.35	36,248.50	101,668.50
United Artists Corp.	214,104.95	349,963.97	126,955.45	154,827.92	87,149.50	195,136.05
Universal Pictures Corp.	956,219.98	1,233,738.89	673,749.17	713,994.03	282,470.81	519,744.86
Warner Bros.	441,522.55	459,491.82	320,127.36	238,686.32	121,395.19	222,805.50
Regional Distributors	783,993.02	955,341.52	524,826.24	494,582.76	259,166.78	460,758.76
	7,242,192.21	9,843,970.23	5,121,984.45	5,798,112.70	2,120,207.76	4,045,857.53

546 *Defendant's Exhibit D*

[Deft's. Ex. No. 4]

UNITED STATES OF AMERICA v. FIRST NATIONAL PICTURES, INC., ET AL.,

EXHIBIT No. 4

Statement showing in regard to each film board, for 1927 and 1928, number of (1) theatres, (2) transfers, (3) purchasers refusing to assume any part of contracts, (4) purchasers assuming all or part of contracts, (5) amounts involved, (6) favorable credit ratings, (7) cases in which credit information refused, and (8) cases reported as "Fraudulent transfer"

Film board		Theatres	Transfers	Purchasers refusing to assume any part of contracts		Purchasers assuming all or part of contracts		Favorable credit ratings	Cases in which credit information refused	Cases reported as fraudulent transfer	
				Number	Amount	Number	Amount				
Albany	1927,	450	48	21	16,141.00	27	35,750.75	46	2	0	1927
	1928,	475	65	21	47,610.71	37	71,869.50	63	2	0	1928
Atlanta	1927,	773	102	43	62,185.75	59	91,678.00	80	14	8	1927
	1928,	816	282	185	450,599.29	90	154,791.67	274	4	2	1928
Boston	1927,	1,165	42	12	36,204.50	30	147,213.65	41	1	0	1927
	1928,	1,187	86	47	183,785.75	27	70,556.75	73	0	1	1928
Buffalo	1927,	533	71	34	92,294.95	37	138,700.21	70	0	1	1927
	1928,	422	82	27	91,213.05	45	152,859.96	73	0	1	1928
Butte	1927,	181	28	6	7,176.75	18	15,843.70	20	5	3	-----
	1928,	181	29	5	13,158.50	22	47,051.55	24	3	0	-----
Charlotte	1927,	506	110	65	52,756.00	42	51,878.48	80	19	11	-----
	1928,	582	211	93	179,420.50	79	133,369.75	198	6	1	-----
Chicago	1927,	1,200	184	58	242,571.42	121	331,072.10	155	19	10	-----
	1928,	1,200	151	76	244,781.81	59	117,070.31	138	7	0	-----
Cincinnati	1927,	1,700	189	38	128,830.59	151	134,757.84	157	26	6	-----
	1928,	1,700	210	57	202,141.20	115	143,604.28	194	7	6	-----
Cleveland	1927,	700	121	54	175,812.32	63	276,681.28	120	1	0	-----
	1928,	728	126	57	234,949.35	55	200,197.22	115	2	1	-----
Dallas	1927,	1,100	219	85	122,317.91	124	203,357.46	168	41	10	-----
	1928,	1,105	251	107	192,470.57	112	242,926.40	204	22	3	-----
Denver	1927,	400	86	19	31,462.10	58	164,617.62	40	32	14	-----
	1928,	425	102	31	91,915.25	63	91,859.50	86	7	5	-----
Des Moines	1927,	600	150	12	2,645.00	138	100,301.35	134	6	10	-----
	1928,	500	167	26	10,885.55	124	301,561.24	158	4	0	-----
Detroit	1927,	656	130	15	58,349.70	115	515,481.32	76	45	9	-----
	1928,	698	114	26	93,224.50	77	221,672.23	108	4	0	-----
Indianapolis	1927,	1,063	107	36	96,068.10	71	224,035.70	105	2	0	-----
	1928,	1,098	131	33	151,305.32	73	279,435.22	114	8	0	-----
Kansas City	1927,	875	285	109	113,298.27	176	223,128.29	251	24	10	-----
	1928,	925	311	127	168,907.68	161	497,741.43	284	13	1	-----
Los Angeles	1927,	475	79	12	43,246.25	67	177,037.75	77	2	0	-----
	1928,	480	119	36	98,712.97	72	222,878.99	118	0	0	-----
Milwaukee	1927,	612	81	31	43,837.43	50	120,693.02	24	55	2	-----
	1928,	600	107	36	58,273.91	53	143,995.57	81	12	0	-----
547											
Minneapolis	1927,	None.					*No record*				
	1928,	1,500	233	53	197,009.04	152	129,957.50	189	25	2	-----
Memphis	1927,	657	104	57	41,628.64	34	52,801.75	91	11	2	-----
	1928,	500	153	123	91,904.15	24	70,866.85	135	11	1	-----
New Haven	1927,	225	50	10	60,631.70	40	219,648.35	47	0	3	-----
	1928,	225	39	17	145,343.00	17	95,893.50	34	1	0	-----
New Orleans	1927,	375	85	61	64,565.62	11	33,316.50	68	11	6	-----
	1928,	418	73	40	88,142.16	19	38,768.00	65	4	2	-----
New York	1927,	1,276	190	38	77,120.04	152	418,498.49	119	6	3	-----
	1928,	1,300	292	80	212,995.14	183	576,093.40	280	0	0	-----
Oklahoma City	1927,	647	99	38	111,351.27	61	111,053.25	84	11	4	-----
	1928,	750	172	76	155,910.15	59	102,667.03	163	2	2	-----
Omaha	1927,	530	689	111	29,346.22	379	85,278.06	522	102	65	-----
	1928,	1,427	328	32	56,459.47	142	167,584.40	310	7	0	-----
Philadelphia	1927,	825	153	23	38,229.00	121	554,683.00	143	8	2	-----
	1928,	825	138	39	52,831.00	84	436,643.93	134	0	0	-----
Pittsburgh	1927,	903	125	81	84,596.55	44	188,099.18	90	26	9	-----
	1928	903	140	65	192,388.55	67	141,914.13	123	9	4	-----
Portland	1927,	257	55	23	No record.	17	No record.	31	10	14	-----
	1928	280	59	21	66,799.75	24	43,532.10	45	2	1	-----

Defendant's Exhibit D—Continued

[Deft's. Ex. No. 4]

Film board	Theatres	Transfers	Purchasers refusing to assume any part of contracts		Purchasers assuming all or part of contracts		Favorable credit ratings	Cases in which credit information refused	Cases reported as fraudulent transfer	
			Number	Amount	Number	Amount				
St. Louis	1927, 1,358	114	27	72,820.05	83	205,530.50	111	3	0	-----
	1928 1,362	140	28	49,446.85	94	253,550.02	119	6	6	-----
Salt Lake City	1927, 535	48	7	11,479.60	41	102,346.25	37	4	7	-----
	1928, 751	54	2	12,455.00	46	133,817.86	50	0	3	-----
San Francisco	1927, 525	88	61	34,253.00	27	121,529.25	68	18	2	-----
	1928, 495	87	24	73,991.56	52	126,468.33	82	0	1	-----
Seattle	1927, 431	54	27	85,552.85	27	88,408.99	54	0	0	-----
	1928, 420	70	40	72,856.40	29	110,187.77	69	1	0	-----
Washington	1927, 600	64	23	74,775.30	41	124,262.28	57	6	1	-----
	1928, 800	90	24	63,969.40	48	203,978.25	72	5	0	-----
	25,078	-----	1,653	4,045,857.53	2,304	5,798,122.70	-----	-----	-----	-----

548 In the United States District Court

[Title omitted.]

Stipulation re transcript of record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said district court in the above-entitled matter as agreed on by the parties.

Dated ——.

CHARLES H. TUTTLE,
Attorney for United States.
CADWALADER, WICKERSHAM & TAFT,
Attorney for First National Pictures et al.

549 [Clerk's certificate to foregoing transcript omitted in printing.]

550 In United States District Court

[Title omitted.]

Order extending time

Filed April 19, 1930

Upon the annexed stipulation of the parties, it is hereby

Ordered that the time of the United States to docket its appeal and file the record on appeal to the Supreme Court of the United States in this cause be, and the same hereby is, extended to and including April 28, 1930.

WM. BONDY, *U. S. D. J.*

A. G., Jr.
Dated New York, April 19, 1930.

551 In United States District Court

[Title omitted.]

Stipulation re extension of time

Filed April 19, 1930

It is hereby stipulated and agreed by and between the solicitors for the United States and the solicitors for the defendants that the time of the United States to docket its appeal and file the record on appeal in the above-entitled cause to the Supreme Court of the United States be extended to and including April 28, 1930.

CHARLES H. TUTTLE,
Solicitor for the United States.
HENRY W. TAFT,
Solicitor for Defendants.

Dated New York, April 18, 1930.

552 In Supreme Court of the United States

Statement of points to be relied upon and designation of the parts of the record to be printed

Filed May 9, 1930

I. Comes now the United States of America, appellant in the above-entitled cause, and pursuant to paragraph 9 of rule 13 of this court states that the points upon which it intends to rely in this court in this cause are as follows:

1. That the United States District Court for the Southern District of New York erred in dismissing the petition herein for lack of equity.

2. That said court erred in not entering a decree herein in accordance with the prayer of the petition.

3. That said court erred in not holding that the appellees herein have engaged in an unlawful conspiracy to coerce and to require exhibitors of motion pictures in the United States acquiring a motion-picture theatre upon purchase or transfer to assume and to perform incompleted contracts for the exhibition of motion pictures in such theatres existing at the time of the purchase or transfer between the former owner or operator of said theatre and any appellee distributor and/or any other principal of any member of any appellee film board of trade.

553 4. That said court erred in not holding that the appellees herein have engaged in an unlawful conspiracy to deprive exhibitors of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer of the right to have any court having jurisdiction of the question settle and determine

whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractual obligations.

5. That said court erred in not holding that the appellees herein have engaged in a conspiracy in restraint of the interstate trade and commerce in motion-picture films by agreeing to adopt, to use, and to enforce the "rules and regulations for the establishment and operations of a credit committee," Exhibit A to the petition herein.

II. And the United States of America, appellant, further states that the parts of the record in this cause, as filed in this court, which are necessary for the consideration of the foregoing points and which need be printed by the clerk of this court for the hearing of this cause, are the following:

Petition.
Answer.
Opinion.
Final decree.
Petition for appeal.
Assignment of errors.
Order allowing appeal.
Citation.
Petitioner's præcipe.
Notice of filing of præcipe and of lodgment of statement of evidence in narrative form.
Acknowledgment of service of præcipe, of notice of filing of præcipe, and of lodgment of statement of evidence in narra-
554 tive form and of citation.
Stipulation re statement of evidence in narrative form and Government Exhibit 24.
Statement of evidence in narrative form.
Order approving statement of evidence in narrative form and settling record.

The exhibits introduced by the petitioner numbered and entitled as follows:

Government Exhibit No. 4.
Government Exhibit No. 4A, except page 21 thereof.
Government Exhibit No. 8, except pages 24 to 27, both inclusive, and pages 48 to 53, both inclusive, of said exhibit.
Government Exhibit No. 18.
Government Exhibit No. 24.

The exhibits introduced by the defendants numbered and entitled as follows:

Defendants' Exhibit A.
Defendants' Exhibit B.
Defendants' Exhibit C.
Defendants' Exhibit D.
Stipulation as to contents of record.
Certificates of the clerk of the United States District Court for the Southern District of New York.

The foregoing designation is made without prejudice to the right of the appellant to refer in briefs or upon argument to any of
555 the original exhibits which have been transmitted to the clerk of this court by the clerk of the United States District Court for the Southern District of New York.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.
C. STANLEY THOMPSON,
Special Assistant to the Attorney General.

To: CHARLES ELMORE CROPLEY, Esq.,
Clerk of the Supreme Court of the United States.
HENRY W. TAFT,
Solicitor for Appellees,
40 Wall Street, New York, N. Y.

556 Copy received May 8, 1930.

HENRY W. TAFT.

557 [File indorsement omitted.]

558 In Supreme Court of the United States

Waiver

Filed May 19, 1930

Come now First National Pictures, Inc., et al., appellees in the above-entitled cause, and state that the parts of the record in this cause filed in this court which need to be printed by the clerk of this court for the hearing of the appeal are those designated in the statement heretofore filed by the appellant herein under and in accordance with the provisions of paragraph 9 of rule 13 of this court, and the appellees hereby waive the right given them under and in accordance with the provisions of said paragraph of said rule to designate additional parts of the record deemed material.

The foregoing designation and waiver are made without prejudice to the right of the appellees to refer in briefs or upon argument to any of the original exhibits which have been transmitted to the clerk of this court by the clerk of the United States District Court for the Southern District of New York.

Dated New York, N. Y., May 17, 1930.

HENRY W. TAFT,
Counsel for Appellees.

To: CHARLES ELMORE CROPLEY, Esq.,
Clerk of the Supreme Court of the United States.
Hon. WILLIAM D. MITCHELL, Esq.,
United States Attorney General.
C. STANLEY THOMPSON, Esq.,
Special Assistant to the Attorney General,
Counsel for Appellant.

559 Service acknowledged this 17th day of May, 1930.

THOMAS D. THATCHER,
Solicitor General.

(Indorsement on cover:) File No. 34,987. S. New York. D. C. U. S. Term No. 95. The United States of America, appellant, vs. First National Pictures, Inc., et al. Filed April 28, 1930. File No. 34,987.

560 [File indorsement omitted.]

U. S. GOVERNMENT PRINTING OFFICE: 1930

MAY 26
CHARLES ELMORE

FILE COPY

No. ~~555~~ 95

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

FIRST NATIONAL PICTURES, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION BY THE UNITED STATES TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 856

UNITED STATES OF AMERICA, APPELLANT,

v.

FIRST NATIONAL PICTURES, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION BY THE UNITED STATES TO ADVANCE

The Attorney General pursuant to Rule 20, paragraph 6, of this Court moves to advance the above-entitled case for a hearing as near the 27th day of October, 1930, during the next term of Court, as may be convenient and immediately after the companion case of *Paramount Famous Lasky Corporation* v. *United States,* No. 820, October Term, 1929. A motion to advance the latter case is being submitted to this Court simultaneously with this motion.

This is a suit in equity by the United States under the Act of July 2, 1890 (26 Stat. 209), known

as the Sherman Antitrust Act. The defendants named are ten corporations engaged in the distribution of motion-picture films to theatre owners throughout the United States, the Motion Picture Producers and Distributors of America, Inc., a New York membership corporation having a Class B membership composed of the defendant distributors, and the thirty-two Film Boards of Trade maintained by the defendant distributors and other distributors of motion-picture films in the thirty-two principal cities of the United States. The petition alleges that the defendants are engaged in a combination and conspiracy in restraint of interstate trade and commerce in motion-picture films.

The petition alleges, among other things, that—

1. The defendant distributors distribute approximately sixty per cent of the motion-picture films distributed annually in the United States, and the membership of each defendant Film Board of Trade represents practically every distributor of motion-picture films in the territory in which the Board operates. The members of the defendant Film Boards of Trade distribute approximately ninety-eight per cent of the motion-picture films distributed annually in the United States, and it is impossible for any motion-picture theatre to secure motion-picture films for its regular operation without dealing with one or more members of the particular Film Board of Trade in the territory in which said theatre is located.

2. The defendant distributors have caused each Film Board of Trade to adopt rules for the establishment and operations of a Credit Committee consisting of three members appointed by the Board. These rules require the reporting of all sales and transfers of motion-picture theatres and of the uncompleted exhibition contracts of the former owners of such theatres. They prohibit contracts for the exhibition of motion pictures, except spot booking, with the new owners of theatres which the Credit Committee finds were sold or transferred to avoid existing contracts unless such new owner pays in cash on each new contract the amount, not exceeding $1,000, determined by the Credit Committee and designated by it as "cash security."

3. There were understandings and agreements among members of the defendant Film Boards which exceeded and supplemented the rules for the establishment and operations of Credit Committees and which had for their purpose compelling each new owner of a theatre sold or transferred to assume all the uncompleted exhibition contracts of the former owner.

The District Court found that the purpose of requiring deposits on contracts with new owners of old theatres was to induce the new owners to assume and perform the contracts of the former owners, that the rules have generally been employed as the basis for negotiations with a view to the fair adjustment of the interests of all concerned, that

the defendants' agreement to demand security was fully justified by their common interest in preserving the integrity of contractual obligations owing to them by others, and that such restraints as may have resulted therefrom were incidental to this legitimate purpose, and therefore not unreasonable or unlawful.

The District Court on December 23, 1929, entered a final decree dismissing the petition. The petition of the United States for an appeal to this Court was allowed February 21, 1930.

An early decision by this Court upon this appeal is of general public interest:

(1) Because this Court has not heretofore determined the legality of collective action by members of an industry to compel prospective customers who acquire the business of former customers to assume the latter's contractual obligations whenever an agency of the industry determines that the business was sold or transferred to avoid existing contracts;

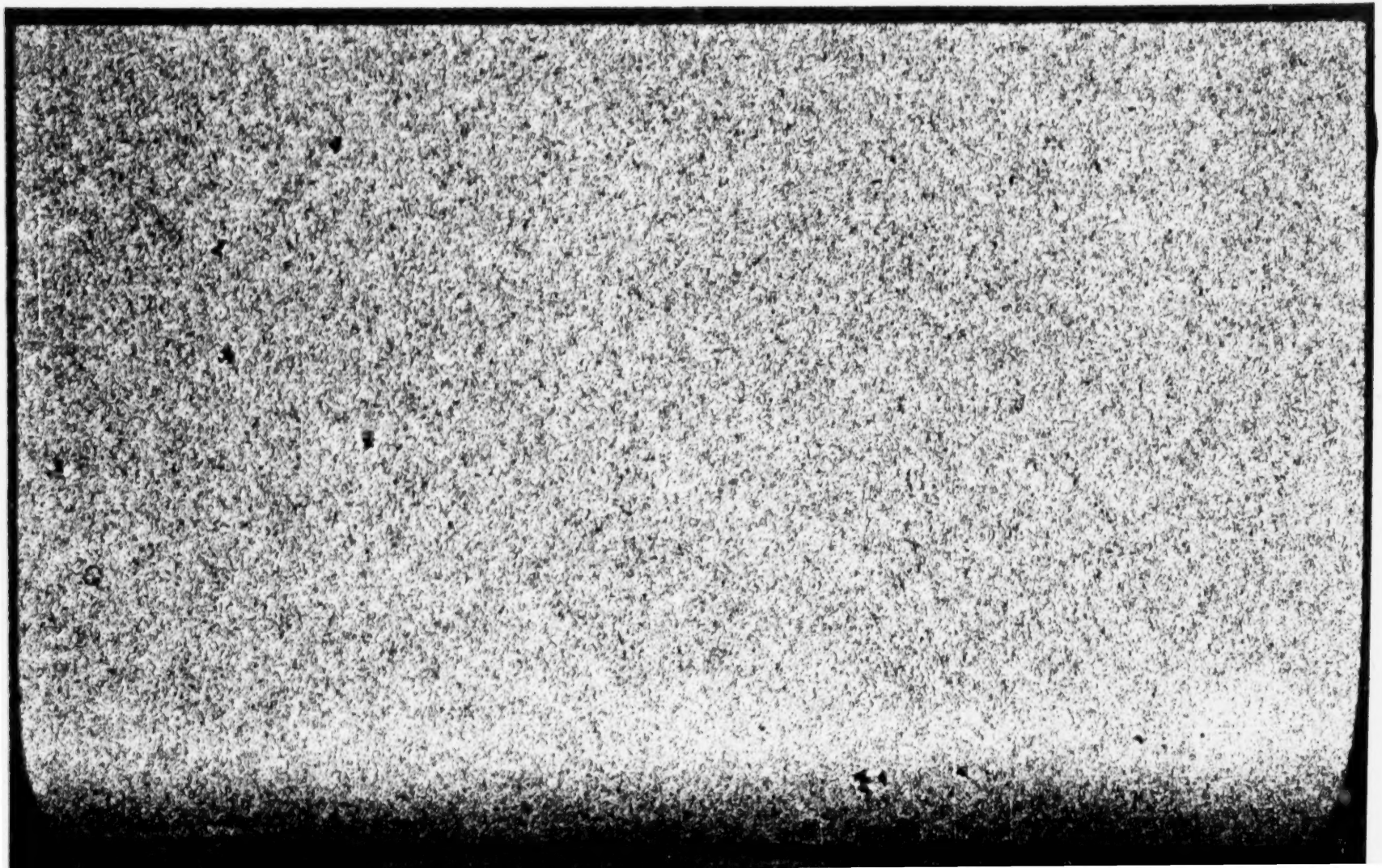
(2) Because final determination of the issues herein will affect the rights and interests of many of the purchasers and transferees of the several thousand motion-picture theatres annually sold or transferred in the United States.

Opposing counsel concur in the motion that the case be advanced.

WILLIAM D. MITCHELL,
Attorney General.

MAY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930



FILED
MAY 17 19
CHARLES ELMORE C
CL

FILE COPY

No. ~~856~~ 95

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v

FIRST NATIONAL PICTURES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 856

UNITED STATES OF AMERICA, APPELLANT

v.

FIRST NATIONAL PICTURES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, the appellant submits herewith its statement showing the basis of the jurisdiction of this Court in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the decree here complained of is conferred by the Act of February 11, 1903, c. 544, 32 Stat. 823, known as the Expediting Act, and by Section 238 of the Judicial Code, as amended by the Act of February 13, 1925.

113553—30

B

DATES OF DECREE AND APPLICATION FOR APPEAL

The final decree sought to be reviewed was entered on December 23, 1929. (Decree p. 2; cumulative p. 127.)[1] The petition for appeal was presented and filed and the order allowing the appeal was made and entered on February 21, 1930. (Petition for appeal, p. 2; cumulative p. 129; order allowing appeal p. 2; cumulative p. 133.) The citation and acknowledgment of service thereof were filed on February 21, 1930. (Citation p. 2; cumulative p. 135.)

C

NATURE OF THE CASE

This cause was instituted by a petition brought by the United States Attorney for the Southern District of New York, acting under the direction of the Attorney General, under the provisions of Section 4 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act, to prevent and to restrain the appellees, the defendants in the District Court, from further engaging in a conspiracy in restraint of interstate trade and commerce in motion picture films in violation of Section 1 of said Act. (Petition pp. 1–58; cumulative pp. 1–58.)

---

[1] The Record has not yet been printed. The cumulative page numbers refer to the pages of the Record (partly printed and partly typewritten) transmitted by the clerk of the court below, counting consecutively from p. 1 of the Petition.

In an opinion filed September 25, 1929, reported in 34 F. (2d) 815, the District Court held that the rules and the operations of the Credit Committees of the Film Boards of Trade, as alleged in the Petition and as established by the evidence, did not constitute an unreasonable restraint of the interstate trade and commerce in motion picture films. (Opinion, pp. 1–13; cumulative pp. 112–125.)

The final decree entered on December 23, 1929, dismissed the petition upon the merits, stating (Decree, p. 2; cumulative p. 127):

> The court [is] of the opinion that the association between the defendants described in the petition and proofs and more particularly evidenced by Exhibit A of the petition entitled "Rules and Regulations for the Establishment and Operations of a Credit Committee" is not a combination or conspiracy to restrain trade and commerce in violation of the Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

D

CASES SUSTAINING JURISDICTION

The following decisions of this Court are believed to sustain the jurisdiction of this Court:

United States v. *American Linseed Co.*, 262 U. S. 371.

United States v. *New York Coffee & Sugar Exchange, Inc.*, 263 U. S. 611.

United States v. *General Electric Co.*, 272 U. S. 476.

United States v. *International Harvester Co.*, 274 U. S. 693.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

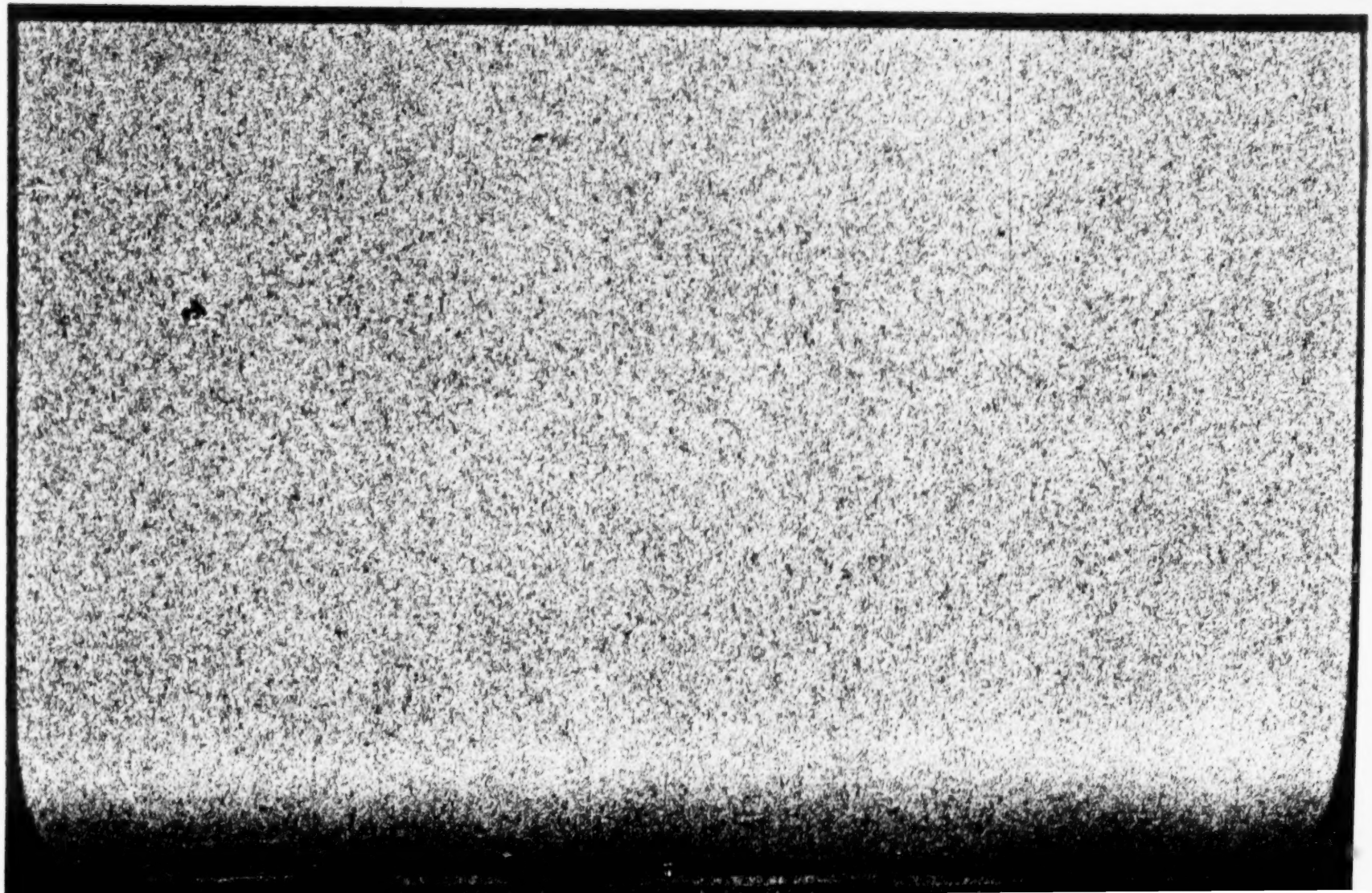
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

CLAUDE R. BRANCH,
C. STANLEY THOMPSON,
Special Assistants to the Attorney General.

ERWIN N. GRISWOLD,
Attorney.

MAY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930



FILE COPY

No. 95

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES OF AMERICA, APPELLANT

v.

FIRST NATIONAL PICTURES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Specification of errors to be urged	17
Summary of argument	18
Argument:	
The concerted action of appellees to coerce and require purchasers and lessees of motion-picture theatres to assume the outstanding exhibition contracts of their predecessors constitutes a conspiracy in unlawful restraint of interstate commerce	21
Conclusion	41

CITATIONS

Cases:	
American Column & Lumber Co. v. *United States*, 257 U. S. 377	31
Anderson v. *Shipowners Association*, 272 U. S. 359	22
Binderup v. *Pathe Exchange*, 263 U. S. 291	4, 23, 24
Cement Manufacturers Association v. *United States*, 268 U. S. 588	19, 28–29
Chicago Board of Trade v. *United States*, 246 U. S. 231	32
Eastern States Lumber Association v. *United States*, 234 U. S. 600	21, 23, 31
Loewe v. *Lawlor*, 208 U. S. 274	23
Maple Flooring Association v. *United States*, 268 U. S. 563	19, 27
Montague & Co. v. *Lowry*, 193 U. S. 38	23
United States v. *Fur Dressers' and Dyers' Association*, 5 F. (2d) 869	34
United States v. *International Harvester Co.*, 274 U. S. 693	2
United States v. *Paramount Famous Lasky Corporation*, 34 F. (2d) 984	31–32
Statute:	
Act of July 2, 1890, c. 647, 26 Stat. 209:	
Sec. 1 (U. S. C., Title 15, sec. 1)	2
Sec. 4 (U. S. C., Title 15, sec. 4)	2–3

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 95

THE UNITED STATES OF AMERICA, APPELLANT

v.

FIRST NATIONAL PICTURES, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the United States District Court for the Southern District of New York (R. 64) is reported in 34 F. (2d) 815.

JURISDICTION

The judgment of the District Court was entered December 23, 1929. (R. 72.) Petition for appeal was filed February 21, 1930 (R. 73), and was allowed on the same day (R. 75).

Jurisdiction of the Court is conferred by Section 2 of the Act of February 11, 1903, c. 544, 32

Stat. 823 (U. S. C., Title 15, Sec. 29), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345). *United States* v. *International Harvester Co.*, 274 U. S. 693.

QUESTION PRESENTED

Whether the adoption and use by appellees of certain credit committee rules constitutes a conspiracy in unlawful restraint of interstate commerce.

STATUTE INVOLVED

The Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C., Title 15, Secs. 1, 4), known as the Sherman Antitrust Act, provides in part as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> * * * * *
>
> SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain viola-

tions of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

STATEMENT

This is a suit in equity under Section 4 of the Sherman Antitrust Act charging that appellees are engaged in a conspiracy in restraint of interstate commerce in motion picture films in violation of Section 1 of that Act. (R. 9.) Appellees (defendants below) are ten leading corporations engaged in the distribution of motion picture films for exhibition throughout the United States, thirty-two Film Boards of Trade (hereinafter sometimes referred to as "Film Boards") located in the thirty-two cities of the United States which are the chief centers of distribution of motion pictures and with a membership consisting of the local exchange man-

agers of distributors of motion pictures, the officers and members of such Film Boards, and the Motion Picture Producers and Distributors of America, Inc., a membership corporation, of which appellee distributors are members. (R. 1–8.) Appellees are the same as the appellants in *Paramount Famous Lasky Corporation* v. *United States,* No. 83 on the current docket of this Court.

The petition charged and the answer admitted that appellee distributors in January, 1926, caused each of the thirty-two Film Boards to adopt certain rules (hereinafter sometimes referred to as "credit committee rules") for the establishment and operations of a credit committee. (R. 21, 34.) The petition further charged that appellees have, through the medium of the credit committees thus established, taken joint action to force upon purchasers and lessees of motion-picture theatres the uncompleted exhibition contracts of their predecessors. (R. 19–25.)

Films produced in the laboratories of the appellee distributors are shipped from these laboratories and distributed, through the medium of film exchanges maintained by the distributors in the cities where the Film Boards are located, to exhibitors in States other than the State of the producing laboratory. (R. 15–19.) The answer admitted and the court below found that appellees are engaged in interstate commerce. (R. 33, 65.) See *Binderup* v. *Pathe Exchange,* 263 U. S. 291.

Appellee distributors distribute approximately 60 per cent of the motion-picture films exhibited in the United States and the members of the various Film Boards distribute approximately 98 per cent of the films exhibited in the United States. It is therefore impossible for any motion-picture theatre to secure sufficient films for its regular operation without dealing with one or more members of the Film Board in the territory in which the theatre is located. (R. 11, 32.) In contrast with such control of distribution by appellees and the other distributors associated with them in the Film Boards, there are thousands of exhibitors who operate a total of between 22,000 and 25,000 motion-picture theatres scattered all over the United States. (R. 39, 280–281.)

It is the practice of each distributor to announce in the spring of the year a program of motion pictures for a distribution period of twelve months to commence the following fall. (R. 13, 33.) Upon the announcement of the annual programs of pictures, exhibitors contract for the number of pictures which they will require for an extended time in the future, generally for a period of one year. (R. 14, 33.) Since no distributor in the course of a year distributes sufficient feature pictures to supply the average exhibitor's program, the average exhibitor deals with from five to fifteen distributors and signs from twenty-five to fifty contracts annually. (R. 38.) An exhibitor who requires an individual motion picture for a date in the im-

mediate future for which no pictures included in his group contracts are available or who needs a picture to complete his program may contract for any film which is available for immediate exhibition. This is known in the trade as "spot booking." (R. 15, 46.) Contracts with exhibitors are solicited by the distributors' exchange managers and their salesmen, but they are in all cases subject to acceptance by the home office. (R. 11–12, 32.) A standard exhibition contract (R. 49) is in general use in the industry (R. 38).

The distribution of motion pictures is entirely on a cash basis since the agreed rental or license fee for exhibition must always be paid in advance of delivery of films. (R. 38, 50.) But if a theatre changes hands and the new owner does not assume his predecessor's contracts, the distributor may find difficulty in leasing to another exhibitor the films covered by such contracts due to the practice in the industry of contracting for films for a considerable period in advance. (R. 38–39.) Although the distributor has in such cases a valid claim against the former owner or operator, there may not be sufficient prospect of recovery to justify bringing suit. (R. 99.) And in some cases the new owner or lessee was a mere dummy for the former owner or lessee. (R. 106.) The court below said with reference to this situation (R. 65–66):

> It appears that prior to the adoption of the credit rules which are here under attack

the distributors suffered very substantial losses through the repudiation of their contracts by exhibitors scattered throughout the United States. In the smaller towns many of the exhibitors were irresponsible financially, and conditions arose very seriously affecting the industry through the transfer of threatres to new owners pending the performance of exhibition contracts. In such cases the new owner, refusing to assume the contracts of the former owner, was solicited by salesmen from various distributors to enter into new contracts, and the distributors whose contracts had been repudiated by the former theatre owner suffered serious damage, rarely recoverable. Nor could the films thus thrown back upon the exchanges be readily placed in other theatres, because their programs had been arranged long in advance, and even when this could be done the films had generally become stale and commanded very much lower rentals than when originally licensed. This situation was seriously aggravated by a common practice among exhibitors in the smaller towns to evade their contractual obligations by colourable transfers of title to their theatres.

To meet this situation the distributors formulated a plan of exerting collective pressure upon purchasers and lessees of motion-picture theatres to compel them to assume the uncompleted contracts of their predecessors for the exhibition of pictures in the transferred theatre. The means adopted for carrying this plan into effect were the credit com-

mittee rules and the credit committees set up thereunder by the Film Boards. The rules state that the purpose of establishing the credit committees is, "To correct abuses and unfair practices which now prevail in the motion-picture industry arising out of changes of ownership of theatres for the purpose of avoiding uncompleted contracts." It is the Government's contention that in the formulation and use of these rules appellees exercised a form of coercive restraint which far exceeded any legitimate attempt to remedy conditions in the industry.

The rules, which are attached to the petition as an exhibit (R. 26–29), provide:

The president of the Film Board shall appoint a credit committee of three members and the secretary of the Film Board shall be the secretary of the credit committee. (Rules I and II.) The entire membership of the committee therefore consists of representatives of the distributors.

Members of the Film Board are required to report promptly to the secretary of the credit committee all transfers of theatres of which they receive knowledge. The secretary thereupon lists the transfer on a "Credit information list" which is circulated among the Board members for their confidential information. Forthwith upon receipt of each such list the members shall report to the secretary all existing contracts for the exhibition of pictures at each theatre listed. (Rule III.)

The secretary of the committee, upon learning of any transfer, is to request the new owner to fill out

within five days from the date of the secretary's request a form of questionnaire. (Rule IV.) A copy of the questionnaire used by the credit committees is attached to the petition as an exhibit. (R. 29–31.) The questionnaire calls for a statement of the contracts for film service made by the previous owner, showing for each such contract the name of the distributor, the date of contract, and the number of pictures unplayed.[1] The questionnaire asks whether these contracts have been assumed; and if not, whether they will be assumed. Included in the questionnaire is an "Assumption of contracts" to be executed by the new owner if he states that he will assume the uncompleted contracts of his predecessor.

The questionnaire also requests certain details concerning the theatre acquired, such as seating capacity, admission prices, etc.; whether the theatre is owned or leased and, if leased, the expiration date of the lease; the date when the theatre was taken over; where and when any bill of sale was recorded; the name and location of each theatre previously conducted; bank and other references and a statement of assets and liabilities.

---

[1] When a theatre goes on the credit information list the members of the Film Board notify the credit committee on what are called "member statements" of the number of outstanding contracts with the former owner, giving the number of pictures and total money value involved. (R. 107.) The information requested by the questionnaire as to uncompleted contracts is therefore obtained by the credit committee from the Board members themselves, but its incorporation in the questionnaire serves to make specific the obligations of the exhibitor in executing an "Assumption of contracts."

Rule V provides that the credit committee shall meet at least once a week to report on new owners and shall furnish members with a copy of their report.

Rule VI sets forth the regulations intended to govern the credit committee in passing upon new owners. This rule reads as follows:

> Upon the refusal or failure of the new owner of a theatre to furnish within the time above provided the information and references requested of such new owner the Credit Committee shall indicate such fact upon the Credit Information List opposite the name of such theatre by the words "Credit information refused" (for which words for brevity the following letters may be used: "C. I. R.").
>
> The credit committee also shall indicate on the Credit Information list every sale or transfer of a theatre which upon investigation the credit committee concludes upon information received and considered was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of pictures at such theatre. Such conclusion shall be indicated opposite the name of the theatre by the words "Transferred or sold to avoid existing contracts" (for which words for brevity the following letters may be used: "F. T.").
>
> The credit committee shall also indicate on the credit information list in a column

headed "Cash security" opposite the name of each theatre listed (excepting, however, such theatres the new owners of which have agreed to assume and complete all existing contracts entered into by the prior owners, and of which agreement notice has been given to or received by the credit committee) the amount of cash security, not to exceed the sum of one thousand dollars ($1,000), which in the judgment of the credit committee is a reasonable sum, which members shall require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre. The credit committee in determining the amount of such security shall consider the total of the rental of pictures likely to be contracted for and the frequency of the possession by the exhibitor of prints of such pictures.

Rule VII (amended), when read in conjunction with Rule VI, constitutes an agreement by distributors belonging to the Film Boards to demand whatever security, not in excess of $1,000, is fixed by the credit committees before entering into exhibition contracts (except "spot booking") with purchasers and lessees of transferred theatres who have not assumed the contracts of their predecessors. This rule reads as follows:

No member of this Film Board of Trade shall enter into a contract or contracts for the exhibition of pictures at any theatre

listed on the credit information list for a period of ten (10) days from the date of the first appearance of such theatre upon such list nor after such period of ten (10) days unless the new owner or lessee of such theatre shall have paid in cash to such member with whom such owner or lessee desires to contract for pictures the amount of security specified on the credit information list opposite the name of such theatre.

This rule shall not be deemed to prohibit members from "spot booking" pictures for exhibition at any such theatre during the said ten-day period or if the credit committee shall not have then reported upon the credit standing of the new owner or lessee of any such theatre to "spot book" pictures for exhibition until the credit committee shall have so reported.

If the credit committee removes the name of a theatre from the credit information list, distributors may then freely contract with the new owner of such theatre. (Rule VIII.)

Any member of a Film Board violating any of the credit committee rules may be suspended or expelled from membership in the Board. (Rule X.)

The rules place every transferred theatre on the credit information list. Except in the case of new owners who have agreed to assume all the existing contracts of their predecessors, the credit committee indicates opposite the name of "each theatre listed" the cash security which in the judgment of

the credit committee is a reasonable sum which members shall require on each new contract for the exhibition of pictures at such theatre. Since the Film Board members have almost a monopoly of the business of distribution and since a theatre can not operate regularly by "spot booking," which would be both very difficult and very expensive (R. 118), the new owner is entirely at the mercy of the credit committee. The actual situation which confronts a theatre carried on the credit list is indicated by the statement in a letter from one Film Board secretary to another, "If credit has never been established, I do not see how that theatre is operating." (R. 239.) The result is that distributors, by agreeing not to deal except on conditions jointly imposed, have the power to force new owners to assume contracts which they are under no legal liability to assume and which may not be adapted to their needs and requirements. Although in many cases the credit committees did not make full use of this power, the element of coercion was obviously always present.

At the trial the Government offered in evidence certain documentary evidence obtained from the files of twenty-one of the Film Boards. (R. 81–83.) After the secretaries of the Dallas, Atlanta, and Omaha Boards had testified as witnesses for appellees, counsel stipulated that the files of these Film Boards (Government Exhibits 4, 4–A, 8, 18, and 24) and the testimony of the secretaries of these Boards should be considered as typical of the

documentary and oral evidence which might have been introduced or given with reference to the other Film Boards and that the case would be submitted on that basis. (R. 134–135.) Appellees also introduced certain figures compiled from the reports of the Film Board secretaries to the New York office of the general attorney of the Boards. (R. 87–88, 137.) The weight to be given these figures is discussed later. (*Infra,* pp. 35–39.)

Under the credit committee rules an "F. T.," or fraudulent transfer, is one "made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of pictures" at a theatre sold or transferred. (R. 27.) Participation by the new owner in such purpose, or even knowledge on his part of such purpose, is not an element in this rating as defined by the rules. The new owner may not have known of all the contracts of the previous owner (R. 256); he may have been misled by the previous owner (R. 274). Since purpose by the prior owner to avoid contracts is sufficient basis for an "F. T." rating, credit committees might, without knowing any of the actual facts involved, make such a rating in almost all cases of transfer where contracts were not assumed. The standard exhibition contract used by the distributors permits exhibition only at a designated theatre (R. 38, 50); so that an owner or operator who transfers his theatre puts it out of his power to fulfill his outstanding contracts. The mere fact of transfer and non-assumption of

contracts by the new owner might be regarded by the credit committees as presumptive evidence of a purpose to avoid contracts.

The only credit information list in the record (Gov. Ex. 24, R. 277) is one employed by the Dallas committee. It uses the key letters "C. I. R.," "F. T.," "Pndg.," and "O. K.," and defines the letters "O. K." as "transfers where all contracts assumed or credit of new owner O. K. or *O. K. with security as recommended*" (italics ours). Although not a single theatre on this list is rated "F. T.," twenty-one theatres are listed as "Previously O. K., With Security Deposits Recommended," and in another case where no key letters are used, cash security of $1,000 is recommended. (R. 277–278.) Government Exhibit 8 and the testimony relating thereto show at least eighteen transfers where the Dallas credit committee recommended security (R. 187, 191, 193, 194, 196, 202, 206, 213, 217, 222, 225, 226, 227, 98–99, 104), but the secretary of the committee in explaining the cases covered by this exhibit described only two or three of them as fraudulent transfers (R. 93, 96–97, 98–99). Although the secretary of the committee testified that listing a theatre "O. K." with security deposit recommended was a practice established individually by the Dallas Board and not covered by the rules (R. 117), nevertheless the records of this Board were one of the three which were stipulated to be typical of the records of other Boards (R. 134).

17271—30——3

The credit committees were not an agency for the exchange of credit information, but, as the court below said (R. 69)—

> *the proof is clear that financial and moral responsibility were subordinate considerations, and the purpose in requiring deposits on new contracts with old theatres was to induce the new owner to assume and perform the old contracts.* (Italics ours.)

The evidence would seem to justify an even broader finding, namely, that the one and only purpose of the credit committee rules was to bring about an assumption of the contracts of the prior owner or operator. The credit information list sent to Board members gives no credit information. (Gov. Ex. 24, R. 277.) If one of the objects was to obtain credit information, there are important omissions. The credit committee rules do not apply to the owners of newly constructed theatres. If the new owner has agreed to assume and complete all existing contracts entered into by the prior owner, the theatre is taken off the credit list and no security is listed even though the new owner has a notoriously bad credit reputation and even though he has not furnished the information requested by the credit committee. (R. 27, 43, 128.) One of the Film Board secretaries in testifying concerning the questionnaire said (R. 107):

> There is also a provision for a financial statement, but very few purchasers make

this out. We are not very insistent about that.

The District Court, in holding that appellees were not engaged in a combination or conspiracy in unlawful restraint of interstate commerce, said (R. 71):

> The defendants' agreement to demand security was fully justified by their common interest in preserving the integrity of contractual obligations owing to them by others. Such restraints as may have resulted from what was done were incidental to this legitimate purpose, and therefore not unreasonable or unlawful.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

(1) In dismissing the petition for lack of equity.

(2) In not entering a decree in accordance with the prayer of the petition.

(3) In not holding that appellees have engaged in an unlawful conspiracy to coerce and require exhibitors of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer to assume and to perform the uncompleted contracts for the exhibition of motion pictures in such theatre existing at the time of such purchase or transfer between the former owner or operator of said theatre and any appellee distributor and any other principal of any member of an appellee Film Board of Trade.

(4) In not holding that appellees have engaged in an unlawful conspiracy to deprive exhibitors of motion pictures in the United States acquiring a motion-picture theatre by purchase or transfer of the right to have any court of competent jurisdiction determine whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractual obligations.

(5) In not holding that appellees have engaged in a conspiracy in unlawful restraint of interstate commerce in motion-picture films by agreeing to adopt, use, and enforce the credit committee rules attached to the petition as Exhibit A.

SUMMARY OF ARGUMENT

The distributors of motion pictures, who together have a substantial monopoly of the business of distributing motion pictures, have agreed to coerce purchasers and lessees of motion-picture theatres to assume the outstanding exhibition contracts of the former owner or operator of the theatre. This coercion has been exercised by agreement or concerted action by the distributors through their representatives on the local Film Boards not to make exhibition contracts with the new owner of a transferred theatre unless he assumes his predecessor's exhibition contracts or deposits on each new contract whatever security, up to $1,000, is listed by the credit committee composed of three members of the local Film Board. Although the agreement

permits a new owner to obtain pictures by "spot booking" without assuming contracts or putting up security, regular operation of a theatre through "spot booking" is not practicable.

We submit that this case is governed by the numerous decisions of this Court condemning as an illegal restraint of trade any agreement not to deal, or even any concerted action by members of a trade having such a purpose and effect. This Court has also said that such an agreement is equally invalid where the restraint may be removed by complying with the conditions fixed by those imposing the restraint. And it is no justification of an illegal combination in restraint of trade that the primary object of the parties to the agreement is to protect themselves against trade conditions which they consider inimical.

This Court has held that exchange of information between members of a trade association which merely permits the individual members to conduct their business more closely in accord with conditions in the trade is not illegal provided there is no express or implied agreement to act in concert on the basis of such information. *Maple Flooring Association* v. *United States,* 268 U. S. 563; *Cement Manufacturers Association* v. *United States,* 268 U. S. 588. There is a clear intimation in these opinions that an agreement to act in concert upon the basis of the information exchanged constitutes

a combination in illegal restraint of trade. We submit that in this case the illegality of appellees' agreement is manifested by the fact that they did not even purport to furnish their members with information which would enable them individually to carry on their business more intelligently, but simply gave them the information necessary to enforce collectively the decisions of their local agencies.

The view of the court below was that the restraint imposed by appellees was justified by their common interest in preserving the integrity of contractual obligations. This, we submit, is a doctrine which would sweep aside all limitations upon collective action by trade groups. Such "common interest" of the individual distributors is to be found in the fact that each enters into similar contracts with exhibitors and desires to have those contracts fulfilled. But the making of similar contracts and an interest in enforcing one's own contracts are not conditions peculiar to the motion-picture industry. Even if members of an industry can under any circumstances combine to set up extra-legal machinery for enforcing contracts, certainly such a combination should not be sanctioned, where, as in this case, the monopolistic power of appellees was exerted to require third persons to assume contracts for which in most cases they were not morally or legally liable.

ARGUMENT

THE CONCERTED ACTION OF APPELLEES TO COERCE AND REQUIRE PURCHASERS AND LESSEES OF MOTION-PICTURE THEATRES TO ASSUME THE OUTSTANDING EXHIBITION CONTRACTS OF THEIR PREDECESSORS CONSTITUTES A CONSPIRACY IN UNLAWFUL RESTRAINT OF INTERSTATE COMMERCE

The substance of the offense charged is that the distributors of motion pictures, who together monopolize the supply, are engaged in collective action to coerce and require new owners of theatres to assume the outstanding film contracts of their predecessors. To attain this purpose rules have been adopted which permit local agencies of the distributors, functioning as credit committees, to fix the amount of security, up to $1,000 on each contract, which new owners who have not assumed the contracts of their predecessors must deposit on each new contract (except "spot booking") until their status has been approved by the credit committees.

An agreement not to deal or even any concerted action having a necessary tendency to effect a boycott is a violation of the Sherman Act. In *Eastern States Lumber Association* v. *United States,* 234 U. S. 600, a list of wholesalers who dealt directly with consumers was circulated among the members of associations of retailers. Names were placed on the list as the result of complaints by individual retailers that a wholesaler was selling to one of the retailer's customers. If a wholesaler gave satisfactory assurance that he was no longer selling in com-

petition with retailers, his name would be removed from the list. There was no agreement among the retailers not to deal with listed wholesalers, but the Court found that circulation of the list was intended to have the natural effect of causing retailers not to trade with concerns listed, and it held that circulation of the lists was a violation of the Sherman Act. The Court classed as an undue and unreasonable restraint of trade a practice which tended to deprive a wholesaler of the trade of retailers, not because of their personal grievances against him but because of the grievance of a member of one of the associations (pp. 612–613). The Court also said (p. 613) that practices which unduly restrain trade could not be justified on the ground that they were necessary to the protection of the retail trade and promotive of the public welfare.

In *Anderson* v. *Shipowners Association,* 272 U. S. 359, this Court held that an agreement among owners and operators of ships on the Pacific Coast to regulate the employment of seamen by establishing offices where each seaman was compelled to register, to await his turn in order to receive employment, and to take whatever employment was offered violated the Sherman Act. The restraint being unlawful, it was no justification that the object of the combination was merely to regulate the employment of men and not to restrain commerce. The Court said (p. 363):

> A restraint of interstate commerce can not be justified by the fact that the object of the

> participants in the combination was to benefit themselves in a way which might have been unobjectionable in the absence of such restraint.

A restraint effected by an agreement not to deal is none the less objectionable because the restraint may be removed by complying with conditions fixed by those imposing the restraint. In *Eastern States Lumber Ass'n* v. *United States, supra,* for example, a wholesaler who abandoned the practice of which the retailers complained was no longer subject to restraint, but this did not render the restraint any the less illegal. In *Montague & Co.* v. *Lowry,* 193 U. S. 38, certain manufacturers of and dealers in tile formed an association with rules which prevented any nonmember dealer from obtaining tiles except at greatly enhanced prices. This Court said (p. 47) that the contention that the party injured by the agreement could, by joining the association, relieve himself of the restraint imposed was no defense to an action for damages under the Sherman Act.

In *Loewe* v. *Lawlor,* 208 U. S. 274, 294, the Court definitely condemned as unlawful any combination which "falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes." In *Binderup* v. *Pathe Exchange,* 263 U. S. 291, *supra,* an exhibitor of motion pictures brought an action for damages under Section 7 of the Sherman

Act. The complaint charged that the exhibitor procured his films from some of the members of the Omaha Film Board of Trade, but had refused to buy from others; that the latter had caused false charges to be made against the exhibitor before the Film Board of Trade and, without his knowledge or an opportunity to be heard, placed him upon its black list, as a result of which distributors refused to deal with him; that the distributors thus refusing to deal controlled the distribution of all films in the United States. In holding that the complaint stated a valid cause of action, this Court said (p. 312):

> It is doubtless true that each of the distributors, acting separately, could have refused to furnish films to the exhibitor without becoming amenable to the provisions of the act, but here it is alleged that they combined and conspired together to prevent him from leasing from any of them. The illegality consists, not in the separate action of each, but in the conspiracy and combination of all to prevent any of them from dealing with the exhibitor. 7

The present case seems to be squarely within the principle of these decisions that an agreement not to deal, or an agreement to deal only on conditions fixed by members of the combination, is illegal. In this case the monopolistic power of appellees creates an added element of restraint which was not present in most of the decisions condemning boycotting practices.

A new owner who does not assume the contracts of his predecessor is faced with this situation: He may "spot book," but he can not regularly operate in this way (*supra*, p. 13). His other alternative is to put up with each new contract the amount of cash security required by the credit committee. Even the $50 which is referred to as the minimum deposit adopted by the Dallas committee (R. 217, 222, 226) would probably be an insurmountable burden to the average small exhibitor who enters into twenty-five to fifty exhibition contracts yearly (R. 38).

The credit committees represented only the distributors and obviously acted with their interests in mind. They and not the exhibitor made the decision. Wherever, as was frequently the case, they made concessions to exhibitors, it is to be assumed that they made those concessions in the interest of the distributors. Thus, by making concessions which would permit a new owner to operate, the distributors could sell more pictures than if the theatre were closed. On the other hand, a spirit of concession was not always shown. For example, a credit committee required a deposit for a period of ten months until the purchaser finally assumed all the contracts of his predecessor, although the latter had overbought and had mixed up play dates, in one case three pictures and in another case two pictures being booked for the same dates. (R. 195–197.)

The vice of the situation lies in the fact that there are no real limitations upon the power of the credit committees, backed as they are by the united power of the distributors. The rules themselves give them almost unlimited discretion and no procedure for appeal from their decisions is provided. In addition, they sometimes went beyond even the rules. Although the rules permit "spot booking," in one case of a dispute with a credit committee an exhibitor wrote (R. 144):

> They promised us they would spot book us till we got a clearence, and now they have all cut us out without a minuite's notice.

The rules permit "spot booking" without security. (R. 28.) In a long-drawn-out dispute (Gov. Ex. 4–A, R. 149–181) between the purchaser of two theatres in Atlanta, Georgia, and the credit committee of the Atlanta Film Board, where a $500 deposit on each theatre was listed, several distributors who were "spot booking" these theatres demanded a $500 deposit on their contracts (R. 174–176, 180). The purchaser in this case went to New York and took up his difficulties with the general counsel of the Film Boards and the security demands were later withdrawn. (R. 169, 174–178.) The rules do not authorize their use to enforce arbitration awards, but when a corporation owning two theatres changed managers and the new manager advised that the corporation still existed and owned the theatres (R. 121–122), they were

listed for $1,000 cash security on the credit information list with the following notation (R. 278):

> Re Palace, Rialto, San Antonio, Epstein advises Alamo Amus. Co. still exists & owns these theatres; however, Epstein signs as gen'l mgr. of Alamo Am. Co. Epstein, Aztec, and Commerce Realty in default of arbitration award. The credit committee, under these circumstances, recommends a $1,000 deposit on any new applications for service in either Palace, Rialto, or Aztec * * *.

Appellees may contend that to make contracts for the future delivery of films is a form of extending credit. Such a contention seems irrelevant, since the operations of the credit committees were for a purpose entirely divorced from the question of credit standing. (*Supra,* pp. 16–17.) But apart from this we submit that the members of a trade association can not, by means of what is in effect an agreement not to deal except on burdensome conditions jointly agreed upon, force third parties to assume contracts which they do not desire. In trade association cases the line of demarcation between illegality and legality, as clearly indicated by the decisions of this Court, is whether there is an actual or implied agreement for concerted action or whether there is complete freedom of individual action.

In *Maple Flooring Association* v. *United States,* 268 U. S. 563, 585–586, *supra,* this Court held that

trade associations which openly and fairly gather and exchange information on costs, volume of production, prices in past transactions, stocks on hand, etc., "without however reaching or attempting to reach any agreement or any concerted action with respect to prices or production or restraining competition" do not thereby engage in unlawful restraint of interstate commerce. And it was careful to point out that if such information becomes the basis of agreement or concerted action to limit production or to raise prices, "Such concerted action constitutes a restraint of commerce and is illegal and may be enjoined."

Cement Manufacturers Association v. *United States,* 268 U. S. 588, *supra,* held that members of a trade association could report overdue accounts and could also report whether cement which members had contracted to deliver under specific job contracts was actually being used for the job described in the contract. Exchange of the former type of information was upheld because there was no evidence that the members agreed to collective action based on the information. Exchange of the latter type of information was upheld because it was not used to fix prices, but simply to enable each member to protect himself against fraudulent orders by purchasers. With reference to credit information the Court said (pp. 599–600):

> The Government neither charged nor proved that there was any agreement with respect

> to the use of this information, or with respect to the persons to whom or conditions under which credit should be extended. The evidence falls far short of establishing any understanding on the basis of which credit was to be extended to customers or that any co-operation resulted from the distribution of this information, or that there were any consequences from it other than such as would naturally ensue from the exercise of the individual judgment of manufacturers in determining, on the basis of available information, whether to extend credit or to require cash or security from any given customer.

With reference to information relating to specific job contracts the Court said (pp. 603–604):

> * * * in our view, the gathering and dissemination of information which will enable sellers to prevent the perpetration of fraud upon them, *which information they are free to act upon or not as they choose,* can not be held to be an unlawful restraint upon commerce, even though in the ordinary course of business most sellers would act on the information and refuse to make deliveries for which they were not legally bound. (Italics ours.)

In the court below appellees contended that Defendants' Exhibit A (R. 278) shows that only a small percentage of total transfers were given an "F. T." rating. We submit that even if appellees did not in all cases enforce their rules, this is no

defense to an illegal restraint of trade. In addition, the only credit information list in the record is that of the Dallas committee. The secretary of that committee testified that it listed security for cases which came within the definition of fraudulent transfers laid down in the rules, but did not designate these cases "F. T." (R. 115.) Purchasers were thereby subjected to substantially the same pressure as when they were rated "F. T." The secretary of this committee testified that the listing of security in any case which was not a fraudulent transfer was merely a recommendation of security which the distributors were, according to the rules, free to demand or not to demand. (R. 114.) But on further examination he admitted that in practice the Film Board members did not enter into new contracts with owners appearing on the credit information list and that, if they did, they always asserted it was a mistake and would probably be censured at a meeting of the Film Board. (R. 114.)

The secretary's interpretation of the credit committee rules seems inconsistent with Rule VII (amended), which provides (R. 28):

> No member * * * shall enter into a contract or contracts for the exhibition of pictures at any theatre listed on the credit information list * * * unless the new owner or lessee of such theatre shall pay in cash to such member * * * the amount of security specified on the credit information list opposite the name of such theatre.

In a letter from one Film Board secretary to another asking for an explanation of a contract made by a distributor for the exhibition of pictures at a theatre carried on the credit list with security, no mention was made of any "F. T." rating. (R. 234.) The answer to this letter advises that "the credit committee had them cancel same immediately." (R. 234–235.)

Even if there was no binding agreement among distributors to demand the security listed by credit committees in cases not rated as "F. T." or "C. I. R.," the intended effect was to bring about a common demand for such security. Under the decisions of this Court in *Eastern States Lumber Association* v. *United States,* 234 U. S. 600, *supra,* and *American Column & Lumber Co.* v. *United States,* 257 U. S. 377, this would appear to constitute an illegal restraint of the same character as a similar restraint accomplished by direct agreement.

The Government has conceded for the purposes of this case that the distributors were in active competition with each other. (R. 84.) But the offense charged is not suppression of competition between distributors; the charge is that the interstate commerce of exhibitors was unlawfully restrained. The District Court in *United States* v. *Paramount Famous Lasky Corporation,* 34 F. (2d) 984, 988 (the appeal being No. 83 on the current

docket of this Court), convincingly answered a similar contention made in that case as follows:

> In judging the inherent character of the restraint one must look not only to the restraint voluntarily imposed upon the competitive activities of those who are in the combination, but also to the involuntary restraint imposed upon the freedom of outsiders to engage in trade under natural and normal conditions. It is therefore not enough to say that competition between distributors is keen and active, or even that it has been promoted and enhanced by what has been done, if, in fact, it can be seen that the freedom of others to engage in trade, to enter into normal commercial agreements, and to have recourse to the courts for their rights, has been unduly restrained by the coercive and collective action of the defendants.

Chicago Board of Trade v. *United States,* 246 U. S. 231, held that the "Call" rule of the Chicago Board of Trade which prohibited members of the Board from purchasing or offering to purchase, during the period between the session of the Board termed the "Call" and the opening of the regular session of the next business day, grain "to arrive" at a price other than the closing bid at the "Call," does not violate the Sherman Act. The rule applied only to agreements to deliver on arrival grain which was already in transit to Chicago or was to be shipped there within a time specified and it therefore covered only a small part of the grain shipped

to Chicago and an even smaller part of the day's sales. It did not apply to grain already in Chicago or grain "to arrive" at any other market. Country dealers and farmers had available in practically every part of the territory called tributary to Chicago some other market for grain "to arrive." It applied only to a part of the business day. The Court also found that within the narrow limits of its operation the rule helped to improve market conditions by creating a public market for grain "to arrive," by bringing into the regular market hours of the Board sessions more of the trade in such grain, by bringing buyers and sellers into more direct relations, by distributing the business among a larger number of Chicago commission merchants, by supplying country dealers with more regular bids from Chicago, by eliminating risks necessarily incident to a private market, and in other ways.

The mere statement of these facts would seem to distinguish the foregoing case from the instant one. The rules here complained of were enforced by those doing 98 per cent of the business of distributing motion pictures; and the rules, instead of merely limiting the price at which bids would be made during a small part of the business day in only one market and with respect to only a small part of the commodity affected, and otherwise stimulating competitive conditions, made it possible to cut off from exhibitors their entire supply of films, and for an unlimited period, unless they met the conditions imposed by the distributors.

In *United States* v. *Fur Dressers' and Dyers' Association,* 5 F. (2d) 869, a District Court held that an agreement by members of a trade association (comprising about one-fifth of those engaged in the business and doing less than seventy per cent of the total business) that they would not make delivery except for cash to customers indebted to members of the association on undisputed accounts in amounts of $100 or more was not an unlawful restraint of trade. We submit that this case, if sound law, is not applicable here. The rules there in question applied against delinquent debtors, whereas here the rules are applied against those not in any default on their contractual obligations. The rules there in question also did not have the same coercive effect as the credit committee rules, because the delinquent debtors could still trade freely on a cash basis or with nonmembers of the association, whereas here cash security may be made an intolerable burden, "spot booking" is impracticable, and there are in effect no nonmembers. Of course, new owners can continue to operate on the contracts of the former owner, but in that event the very restraint intended by the rules is accomplished.

Appellees' answer alleges that distributors suffered losses when theatres were transferred and outstanding contracts were not assumed (R. 38–39), but we submit that this fact gave them no license to violate the antitrust laws by imposing an

unreasonable restraint on the trade and commerce of others.

It seems fair to conclude that one important effect of the credit committee rules has been to transfer certain losses from the highly organized distributor group to the largely unorganized exhibitors. If an owner has contracted for too many films (R. 195), or agreed to too high rentals (R. 143), or used poor judgment in the selection of pictures, his failure and consequent repudiation of contracts are likely to follow. In such event the credit rules may be used to impose on the new owner the unsuccessful policy of his predecessor, thus shifting the risk of loss from the distributors to the new exhibitor, although the loss is properly that of the distributors who made the contracts and who have been receiving the profits incidental thereto. It is a proper inference that in the great majority of cases where contracts are not assumed it is because they are unsatisfactory, since the assumption of satisfactory contracts does not put a new owner at any disadvantage.

In the court below appellees contended that the figures in Defendants' Exhibit A (R. 278) showing the number of purchasers in 1927 and 1928 who refused to assume any part of the uncompleted contracts of previous exhibitors and the amount of rentals involved in such contracts indicate that the credit rules were not drastically enforced. But we submit that these figures, being based on the first

reports of the credit committees, are unreliable as a true picture of the situation.

The reason why the first reports of the credit committees can not be accepted as showing how the collective pressure exerted by these committees was used to coerce purchasers into assuming contracts they did not desire is that the pressure of the credit committee rules is ordinarily applied *after* the credit committee has made its first report listing a theatre on the credit information list. This is graphically illustrated by the fact that of the 175 "F. T." ratings for 1928 shown in the first reports only 30, or less than eighteen per cent, remained at the end of the year, and of 974 "C. I. R." ratings for 1928 shown in the first reports only 183, or less than nineteen per cent, remained at the end of the year. (R. 279.)

Defendants' Exhibit A was prepared by an assistant of the general attorney of the Film Boards from reports received in his office from the Film Boards. (R. 87.) The exhibit does not specifically state whether the figures on the number of purchasers not assuming any contracts and on the amount of rentals involved in such contracts are based on the first or the final reports of the credit committees, and appellees' counsel on direct examination of the witness who prepared this exhibit did not ask any question to elicit this information. (R. 87–88.) Notations to the figures on this exhibit give the favorable credit ratings and the "C. I. R."

and "F. T." ratings for the year 1928 based on the first and the final reports of the credit committees and also show that no figures were available for 1927 based on both the final reports of the credit committees. The witness testified that the figures on "F. T." ratings in Defendants' Exhibit D (R. 280) were based on the first reports of the credit committees for the year 1927 and on final reports for the year 1928 (R. 137), and on cross-examination said (R. 138):

> We had no information as to the ultimate figures. We did not call for it that way.

The witness, on cross-examination as to the basis for the 1928 figures on purchasers who did not assume contracts, gave conflicting answers to questions as to whether the first report or the ultimate report was the basis for these figures. (R. 88.)

As appellees failed to establish that the figures on the number of purchasers who did not assume contracts and on the amount of rentals involved in such contracts were based on final reports of the credit committees, and as there was a clear implication from Exhibit A and the testimony that 1927 figures based on final reports were not available, we submit that these figures must be taken as representing the first reports of the credit committees. If the ratio of change between the first reports and the final reports with reference to the 1928 "C. I. R." and "F. T." ratings is applied, the number of purchasers who refused to assume contracts

was, for the years 1927 and 1928 combined, less than seven per cent of total transfers in those years, and the amount of rental involved in such cases was, for these two years combined, less than eight per cent of the aggregate rental involved in uncompleted contracts of theatres transferred during these years. This would indicate that the credit committees achieved a large measure of success in compelling assumption of contracts.

We also submit that the figures on favorable credit ratings in Exhibit A also do not give a true picture of the situation. The only unfavorable credit ratings which the witness recognized were those marked either "C. I. R." or "F. T." (R. 89), but cash security might be listed without either of such ratings (R. 277–278). The actual pressure applied was by the listing of cash security and the evidence does not disclose in how many cases cash security was required.

The figures in Exhibit A showing the amount of rentals involved in uncompleted contracts when theatres were transferred give no indication whatever of the losses which distributors would suffer if the pressure of the credit committee rules were not applied. In the first place, quite apart from the rules, purchasers in many cases would *voluntarily* assume these contracts; in fact, the self-interest of the former owner in relieving himself of default on his contracts would lead him to make assumption of the contracts a condition to the

transfer of the theatre unless the purchaser regarded the contracts as definitely unfavorable. In the second place, even where contracts were not assumed the distributors involved could place their films in other theatres and the figures are therefore not an index to the distributors' losses on whatever part of the uncompleted contracts would not be voluntarily assumed by purchasers. In the third place, taking the distributor group as a whole, the effect of nonassumption of contracts is largely a shifting of business among the distributors without any substantial decrease in total rentals received since the rentals paid by new owners on new contracts would approximate the rentals on the contracts not assumed. Finally, some loss from failure to fulfill contracts is an element of every business, but the motion-picture industry, being on a cash basis for delivered films, has less credit risk than the ordinary business, and in any event whatever net credit losses distributors suffered by reason of nonassumption of contracts would be significant only in comparison with the total business done, and appellees introduced no figures showing their total business.

If appellees had really been interested solely in obtaining information concerning the new owners of theatres they might merely have circulated among their members whatever information the Board secretaries might obtain as to the moral and

financial standing of new owners and as to possible collusive arrangements between them and their respective predecessors. But no such information was given to the distributors; the only relevant information given was the cash security which would be required upon entering into new contracts, which cash security the distributors had agreed with each other to exact, not of those who were in default on their contracts but of those who conveniently could be forced to assume the contractual obligations of others.

We submit that the implications of the holding of the lower court that the restraint imposed by appellees "was fully justified by their common interest in preserving the integrity of contractual relations owing to them by others" (R. 71) carry too far. In any industrial grouping it is to the interest of each member to have his customers fulfill their contracts. But this Court has never sanctioned an agreement among the members of an industry to act in unison in making an agency of the group an extra-legal tribunal to compel fulfillment of contractual obligations. Such a restraint on competition seems particularly obnoxious to the antitrust laws where the enforcing group, as in this case, has monopolistic control of the industry. The alleged justification would seem to become even more untenable where, as in this case, the pressure of the group is applied to those who in most cases are not under any legal liability to the members of the industry.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be reversed with directions to enter a decree in accordance with the prayer of the petition.

WILLIAM D. MITCHELL,
Attorney General.

JOHN LORD O'BRIAN,
The Assistant to the Attorney General.

CLAUDE R. BRANCH,

CHARLES H. WESTON,
Special Assistants to the Attorney General.

OCTOBER, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

Supreme Court of the United States

October Term, 1930. No. 95.

UNITED STATES OF AMERICA,
Appellant,

against

FIRST NATIONAL PICTURES, INC., *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPELLEES' BRIEF.

HENRY W. TAFT,
Counsel for Appellees,
40 Wall Street,
New York, New York.

JOHN W. DAVIS,
CORNELIUS W. WICKERSHAM,
PAXTON BLAIR,
ARTHUR L. FISK, JR.,
GABRIEL L. HESS,
of Counsel.

SUBJECT INDEX.

	PAGE
Preliminary Statement	1
The Petition	1
The Answer	2
Admissions by the Government	3
The Trial	5
The Issues and the Opinion Below	6
The Decree	9
The Credit Rules	9
Outline of Argument	13
POINT I. Fraudulent transfers had become a widespread evil and were causing the distributors large losses annually	14
1. Business methods of the industry and severity of competition	14
2. Frequency of transfers of theatres	15
3. Why transfers cause breaches of contract	17
4. Difficulty of mitigating damages	18
POINT II. The effect of the Credit Rules has been to diminish the number of fraudulent transfers; the Rules have benefited the industry and improved its ethics	21

PAGE

POINT III. The Credit Rules are normal and reasonable trade regulations 25

1. The decisions 26

(a) The cases cited by the Government are distinguishable 33

2. Reasonable measures against losses by fraud of debtors are forms of credit protection 35

(a) The questionnaire is legitimate 37

3. The ten-day period of investigation during which the transferee of a theatre may "spot book" pictures prevents any unreasonable inconvenience to him 42

4. The rule requiring security of a transferee of a theatre, where the transfer is listed as fraudulent, or where credit information has been refused, is reasonable and does not occasion any hardship 45

5. The actual application and effect of the Credit Rules in practice, and the absence of complaints, show the rules to be fair and reasonable 51

POINT IV. The District Court properly held that there was no proof of the supplemental agreements described in the petition 53

Summary 56

Conclusion 57

Appendix 58

Table of Cases Cited.

	PAGE
Anderson v. Shipowners Assoc., 272 U. S. 359	34
Binderup v. Pathé Exchange, Inc., 263 U. S. 291	34
Brewster v. Miller's Sons Co., 101 Ky. 368, 41 S. W. 301	30, 31
Cement Manufacturers Assoc. v. United States, 268 U. S. 588	29, 55
Chicago Board of Trade v. United States, 246 U. S. 231	9, 26, 29, 34, 35
Delz v. Winfree, 80 Tex. 400, 16 S. W. 111	33
Delz v. Winfree, 6 Tex. Civ. App. 11, 25 S. W. 50	31, 32
Eastern States Lumber Assoc. v. United States, 234 U. S. 600	30, 33, 34
Loewe v. Lawlor, 208 U. S. 274	34
Martell v. White, 185 Mass. 255, 69 N. E. 1085	30
Montague & Co. v. Lowry, 193 U. S. 38	33, 34
Putnal v. Inman, 76 Fla. 553, 80 So. 316	31
Reynolds v. Plumbers Proctective Assoc., 30 Misc. (N. Y.) 709, 63 N. Y. Supp. 303	31
Swift & Co. v. United States, 196 U. S. 375	29, 34
United States v. Addyston Pipe & Steel Co., 85 Fed. 271, 175 U. S. 211	34
United States v. Fur Dressers & Fur Dyers Assoc., Inc., 5 F. (2d) 869	30, 52
United States v. King, 229 Fed. 275	29
United States v. United States Steel Corp., 251 U. S. 417	53
Woodhouse v. Powles, 43 Wash. 617, 86 Pac. 1063	31

Other Authorities.

PAGE

Acts of Congress:
26 Stat. 209 (Sherman Act) 1, 6, 26, 29, 30, 34
Cooley on Torts 33
Webster's Dictionary 35

For the Opinion below
see 34 F. (2d) 815

IN THE

Supreme Court of the United States

October Term, 1930.

UNITED STATES OF AMERICA, *Appellant,* *against* FIRST NATIONAL PICTURES, INC., *et al.*, *Appellees.*	No. 95

APPELLEES' BRIEF.

Preliminary Statement.

The United States has appealed to this Court from a final decree of the United States District Court for the Southern District of New York (THACHER, D. J.) dismissing, upon the merits and after trial, a suit in equity under the Sherman Act wherein the United States of America was the Petitioner. For the Opinion see 34 F. (2d) 815, R., p. 64.

The Appellees are ten of the leading producers of motion pictures in the United States and the principal agencies through which motion pictures are licensed and distributed to the exhibitors throughout the country.

The Petition.

The Petition, parts I-VII of which (covering R., pp. 1-19) are identical with corresponding parts of the Petition in the *Paramount Case* (Docket No. 83 of the

current Term), purports to found an unlawful conspiracy upon certain "Rules and Regulations for the Establishment and Operations of a Credit Committee" (R., p. 26), hereinafter referred to as the "Credit Rules", adopted by the appellee distributors in January, 1926. The petition charged that the defendants had conspired

> "a. To coerce and to require every exhibitor of motion pictures in the United States, acquiring a motion picture theatre by purchase or transfer, to assume and to perform every uncompleted contract for the exhibition of motion pictures in such theatre existing at the time of such purchase or transfer between the former owner or operator of said theatre and any defendant distributor and/or any other principal of any member of any defendant Film Board of Trade;
>
> "b. To deprive every exhibitor of motion pictures in the United States, acquiring a motion picture theatre by purchase or transfer, of the right to have any court having jurisdiction of the question settle and determine whether such purchase or transfer has been fraudulent and for the purpose of avoiding contractual obligations" (Pet., part VIII, R., p. 20).

The Answer.

The defendants deny the conspiracy charged, and set forth in the answer the facts peculiar to the motion picture industry, the nature and extent of the credit advanced by distributors to exhibitors in the ordinary course of business, the great number of changes of ownership of theatres occurring each year and the large losses sustained by defendants by reason thereof, the absence

of credit information and the need therefor, the purpose, nature and effect of the Credit Rules, the existence of keen competition in the industry, the intent of the defendants and the end sought to be attained by them. The defenses were to the effect that the Credit Rules were designed to protect the appellees from fraud, namely, from losses caused by the fraudulent transfer of motion picture theatres made to avoid uncompleted contracts, and that in practice the Rules were applied fairly and legitimately to accomplish the desired result of credit protection, that in effect no one was injured, and that the rules reduced the number of cases of fraud (Answer, paragraphs X through XIX, R., pp. 36-47).

Admissions by the Government as to Competition in the Industry.

The Government admitted for the purposes of this suit only (R., pp. 84, 85):

> "At all the times mentioned in the petition there has been, and there is today, competition throughout the United States in the distribution of motion-picture films by the defendant distributors and by other distributors engaged in the motion-picture business. At all such times the defendant distributors have been, and they are today, competing with each other and with all other distributors, in the distribution of their pictures throughout the United States [Answer, R., p. 45].
>
> "In each of the States and parts of States in which the branch offices of the distributors operate as stated in the petition and in which the branch managers of such branch offices solicit the business of the theatres located therein and distribute the pictures of their several companies all of the distributors distributing pictures therein, includ-

ing the 10 defendant distributors, the 77 regional distributors named in the petition, and other distributors not named, are competing with each other in the distribution and for the exhibition of their pictures, and they have been competing with each other at all the times mentioned in the petition [Answer, R., p. 45].

"Immediately after the announcement in the spring of each year of its program of pictures for the 12 months' period commencing the following fall, each distributor proceeds to solicit and conclude as many contracts as possible for the exhibition of such pictures with the thousands of exhibitors who own or operate the 22,000 theatres in the United States. *Each contract is a matter of negotiation and bargaining between the distributor and the exhibitor.* The great majority in number of the contracts of each distributor are solicited by the branch managers or by their salesmen, but the acceptance of each application for a contract is subject to the approval of the home or principal office of each distributor [Answer, R., p. 46].

"*In negotiating and bargaining for contracts with exhibitors* (the operators of theatres) in his territory, *each branch manager finds all the branch managers and salesmen of the other distributors who are doing business in his territory competing with him on contracts for feature pictures, short-subject pictures, comedies, specials, and news reels.* Similarly, when an operator of a motion-picture theatre requires an individual motion picture for a date in the immediate future for which date no pictures included in his group contracts are available or needs a picture to complete his program, each distributor who has a picture in his branch office available for such exhibition competes for the business and seeks through its branch manager

> and salesmen to conclude a contract with such exhibitor. This is known in the trade as 'spot booking'" (Pet., part V, 7, R., p. 13; Answer, R., p. 46; italics ours).

The general conduct of the motion picture industry and the organization and functions of the Film Boards of Trade were described in the pleadings in the *Paramount Case,* and the analysis of them made in our brief in that case (pp. 9-12) need not be repeated here.

The Trial.

The Government called no witnesses, but based its case upon documentary evidence, upon admissions in the Answer, and upon the cross-examination of the defendants' witnesses. The documentary evidence consisted of papers taken from the files of the defendants, concerning which counsel stipulated on the record as follows (R., pp. 78-79):

> "All of the exhibits introduced by the Government are copies of papers taken by the special agents of the Department of Justice from the files in the offices of the defendants and the film boards of trade, to which files the Government has been given the fullest access during the last four years, as stated in stipulation between counsel to be introduced."

The Government thereupon offered in evidence twenty-three volumes of papers (marked Exhibits 1-23), taken from the files of two of the defendant distributors and of twenty-one of the thirty-two Film Boards of Trade, and rested (R., p. 83). An additional volume (Ex. 24) was offered at R., p. 121. After counsel for the

defendants had examined the secretaries from three Film Boards of Trade (Dallas, Atlanta and Omaha) regarding the papers from the files of those Boards put in by the Government, counsel for both sides stipulated (R., p. 134) that the exhibits taken from the files of the Dallas, Atlanta and Omaha Film Boards of Trade were typical of the Government exhibits obtained from the other eighteen Film Boards of Trade. Counsel also stipulated that the testimony of the secretaries of Dallas, Atlanta and Omaha was typical of the testimony that would have been given by each of the secretaries of the other twenty-nine Film Boards of Trade if called and sworn to testify.

In view of the above stipulation, the Government withdrew all its exhibits except those relating to Dallas, Atlanta and Omaha (Exhibit 8, R., p. 182; Exhibit 4 and 4-A, R., pp. 139 and 149; Exhibit 18, R., p. 227), and the defendants' counsel agreed not to call as witnesses the secretaries of the other twenty-nine Film Boards of Trade (R., p. 135).

The Issues and the Opinion Below.

The question presented is the legality under the Sherman Act of the Credit Rules and the action taken by the defendants under the Credit Rules as shown by the record. We venture to say that one cannot read the record without being fairly convinced (1) that the Rules were necessary for the protection of the defendants against fraudulent transfers of theatres, and (2) that they were enforced with fairness and leniency.

The object of the Credit Rules was not to affect the assumption by transferees of the transferors' outstand-

ing contracts, but to reduce the number of transfers where the established purpose was to evade contractual obligations by colorable transfers of theatres, with consequent large losses to distributors. The Government argues, on the other hand, that the purpose was to compel the new owners to assume the uncompleted contracts of their predecessors, and bases its argument to a great extent on this assumption. We shall show below that the assumption is not well founded.

It is clear from the record that the transfer of a theatre to a dummy was a convenient and frequent means adopted by exhibitors who had gotten themselves into difficulties and that the Rules were designed to act as a deterrent for this class of fraud and that that has been their effect.

The exhibitor who transfers his theatre knows that litigation has been shown to be futile and that the injured distributors will probably not resort to it. The transferee in fraudulent cases, usually a convenient relative or employee, knows that the transfer will result in defrauding the distributors if he fails to assume the existing contracts. He can scarcely be described as the innocent party which the Government brief would have him be.

Even in such cases it should be noted that the transferee normally continues to get pictures either by the process of "spot booking" *, or by putting up the small security required either when the transfer is fraudulent or when he has refused to give the distributors the information requested, or by obtaining service under some of the existing contracts, or from non-member distributors.

---

* *I. e.*, making leases picture by picture for immediate exhibition from available supplies, as opposed to booking by the season on prospectus prior to actual availability. And see R., p. 85.

We do not agree with the Government (brief, p. 6) that the distribution of motion pictures is entirely on a cash basis, thus implying that the Credit Rules must necessarily be performing functions other than those of credit. In this industry, credit is fairly entitled to a broader definition than the mere antithesis of cash.

The stipulation shows that no complaint is made of any reduction of competition among the distributors, and the last-minute attempt of the Government to maintain that competition among the exhibitors is affected must fail in view of the lack of evidence to support the charge and of the marked increase in the number of theatres in the country since the establishment of the Credit Rules (R., pp. 109, 280, 281).

In a further effort to show illegality the Government alleged (Pet., part IX, 4, R., p. 23), that the appellee Film Boards of Trade entered into agreements and understandings supplementing and exceeding the provisions of the Credit Rules, though the Petition concedes that the making of the supplemental agreements and the activities of the Appellees thereunder were "without the knowledge and against the general instructions of the defendant distributors and of the defendant association" (R., p. 23).

The findings of the District Court were against the contentions of the Government as to the existence of the supplemental agreements (R., p. 69), and the record fully sustains the conclusions of the Court (R., pp. 110, 111, 124, 125, 136).

As to the scope and effect of the Credit Rules, Judge THACHER took the view that, even though "financial and moral responsibility [of transferees of theatres] were subordinate considerations and the purpose in requiring

deposits on new contracts with old theatres was to induce the new owner to assume and perform the old contracts" (R., p. 69), nevertheless the "defendants' agreement to demand security was fully justified by their common interests in preserving the integrity of contractual obligations owing to them by others" (R., p. 71).

The truth is that the abuses were so general and the losses to distributors so large that the conditions could only be corrected by the common action of those interested in common. On the ground that the Rules had for their object and effect the elimination of trade abuses and the promotion of fair and honorable dealing, the Court upheld them, citing (R., p. 70) among other cases *Chicago Board of Trade* v. *United States,* 246 U. S. 231 (1918).

The Decree.

On December 23, 1929, the Court entered a Decree to the effect that "the petition herein be, and the same hereby is, dismissed upon the merits" (R., p. 73).

The Credit Rules.

Rule I recites that to correct abuses and unfair practices "which now prevail" in the motion picture industry arising out of changes of ownership of theatres for the purpose of avoiding uncompleted contracts, a credit committee of three members is to be appointed to investigate and report to the members (of the Film Boards of Trade) the names of all persons who have acquired by purchase or transfer the theatres located in the particular territory (R., p. 26, *et seq.*).

Rule III requires the members of each Film Board of Trade (whose membership consists chiefly of managers of the distributors' exchanges in the various distribution centers) to report to the secretary of the Credit Committee of the Board all "sales or transfers of theatres of which members receive knowledge". From information thus supplied the secretary compiles a "Credit Information List" which is distributed to the members of the Film Board of Trade for their confidential information. On its receipt they are required to supply to the secretary the name (if known) of the exhibitor formerly operating the transferred theatre and the contracts (if any) each member had with him. The number of pictures and the number of playing days contracted for must be stated. The members are required to give the name of the transferee, if they know it, and to state whether or not the exhibitor provided, as a condition of the sale or transfer of his theatre, for the assumption and complete performance by the new owner of the contracts so listed (*ibid.*).

Under Rule IV, it is the secretary's duty upon learning of the sale or transfer of a theatre to request the new owner to furnish to the Credit Committee within five days "information and references to enable the Credit Committee to intelligently report to the members the credit standing of such new owner". For the purpose of securing such information a questionnaire is sent out (R., p. 27; and see R., pp. 29-31).

Rule V provides that the Credit Committee shall meet at least once a week to examine and report upon the credit standing of new owners and to furnish to members for their confidential information a copy of such report.

If the transferee refuses or fails to furnish the information and references requested, the Credit Committee indicates such refusal upon the Credit Information List by placing opposite the name of the transferred theatre the words "Credit Information Refused" or, more usually, the abbreviation "C. I. R." (Rule VI).* The same rule provides for the indication on the Credit Information List of every sale or transfer of a theatre which the Credit Committee concludes, upon information received and considered, "was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for the exhibition of pictures at such theatre." When such a conclusion has been reached, the words "Transferred or Sold to Avoid Existing Contracts", or, more usually, the symbols "F. T.", are placed upon the List opposite the name of the theatre.

In the case of theatres classified as C. I. R. or F. T. (except where the new owner assumes the existing uncompleted contracts) the Credit Committee indicates on the Credit Information List in a column headed "Cash Security" the amount of cash security, not to exceed $1,000, which in the judgment of the Credit Committee is a reasonable sum which members shall require to be deposited as security for the performance of *future* contracts for the exhibition of pictures at such theatre. However, notwithstanding the C. I. R. or F. T. classification, security is not required on any contracts of the former owner which the new owner has agreed to assume and complete (Rule VI, R., p. 27; and see R., p. 101).

* In the case of Dallas Film Board of Trade the term "C. I. R." is used to mean either "credit information refused" or "credit information requested" (R., pp. 107, 113, *infra*, p. 49).

In determining the amount of security, the Committee is to consider the total of the rental of pictures likely to be contracted for and the frequency of possession by the exhibitor of prints of such pictures (*ibid.*).

Rule VII provides that members of the Film Boards of Trade shall not contract for the future exhibition of pictures at theatres on the Credit Information List for a period of ten days from the date of the first appearance of such theatre on the List; nor shall they contract, after the ten day period, unless the new owner has furnished to such member the amount of security specified on the Credit Information List opposite the name of such theatre.

But it is specifically provided that members may "spot book" pictures * during the period or thereafter until the Committee has reported.

The statement of this Rule on page 30 of the Government's brief is defective, as it omits one of the most vital qualifications, namely the ten-day period. We therefore quote the Rule in full in the margin.†

Whenever satisfactory evidence of the credit standing of a new owner is received, the Credit Committee removes the name of the theatre from the Credit Information List and members are no longer under the duty

---

* See footnote, p. 7, *supra*.

† "No member of this film board of trade shall enter into a contract or contracts for the exhibition of pictures at any theatre listed on the credit information list for a period of ten (10) days from the date of the first appearance of such theatre upon such list nor after such period of ten (10) days unless the new owner or lessee of such theatre shall have paid in cash to such member with whom such owner or lessee desires to contract for pictures the amount of security specified on the credit information list opposite the name of such theatre.

"This rule shall not be deemed to prohibit members from 'spot booking' pictures for exhibition at any such theatre during the said ten day period or if the credit committee shall not have then reported upon the credit standing of the new owner or lessee of any such theatre to 'spot book' pictures for exhibition until the credit committee shall have so reported" (R., p. 28).

of calling for the deposit of security as a condition of making contracts for the exhibition of pictures at such theatre (see Rule VIII, R., p. 28).

Members are required by Rule IX to furnish information to the Credit Committee and in the event of violation of the Rules are subject to suspension or expulsion (Rule X).

In actual practice, the vast majority of transfers are cleared without difficulty of any kind, and it is usually only in the clearest cases of fraud that security is required for any length of time. The tendency is to apply the Rules with great leniency, particularly in view of the fact that the distributors are themselves in keen competition with each other for the business of the theatres. Moreover, there is nothing to prevent the new owner from obtaining service under the contracts existing at the time of the transfer by assuming the same, and even if he refuses to do so and refuses to give the required information, he may still obtain pictures by "spot booking" until the Committee's report and thereafter, even if the transfer is not cleared, he may obtain new contracts by putting up a small deposit.

Outline of Argument.

The position which the Appellees take in this brief is that (I) fraudulent transfers of theatres to evade exhibition contracts had become a widespread evil causing large annual losses to the distributors, the losses being generally difficult either to mitigate by fresh contracts or to recover by suit; and (II) that the effect of the Credit Rules has been not only to diminish the number of fraudulent transfers but to benefit the industry by inculcating an increased respect for contracts.

We further take the position (III) that both in the light of the decisions and in view of the way the motion picture business is carried on, the Credit Rules were reasonable trade regulations and created a form of credit protection entirely legitimate in its scope and operation, the Rules embodying a sufficient number of safeguards to prevent their restraint from being productive of hardship or inconvenience. The practical operation and effect of the Rules and the dearth of complaints will be found to corroborate the foregoing.

POINT I.

Fraudulent transfers had become a widespread evil and were causing the distributors heavy losses annually.

1. Business methods of the industry and severity of competition.

It will be a sufficient *resumé* of the method of doing business to observe that (*a*) pictures for a whole season are contracted for in a group each Spring prior to their release dates (R., p. 85); (*b*) the average exhibitor uses about 200 feature pictures a season and about 300 short subjects, news reels and comedies (R., p. 107); (*c*) the number of features produced by any one distributor is such that for a complete season's program an exhibitor contracts with from 5 to 15 different distributors; (*d*) the contract employed is standardized (R., p. 49) and provides in brief that each picture leased is leased for exhibition by the exhibitor at the theatre named in the contract, and not otherwise. *

* This latter proviso (Art. Third, R., p. 50) was required to end "bicycling", or unlicensed re-exhibition. See our brief in the *Paramount Case*, pp. 27, 46. At to the exhibitor's right to assign contracts, see R., p. 54, and *infra*, p. 42.

There were 10,500 feature productions released between January 1, 1915 and January 1, 1929, showing an average annual production of 700 features during the past fifteen years (R., p. 86). Short subject production approximated 3,000 subjects in 1928. For each of the years 1926 and 1925 the short subject production was just under 2,400 subjects (*ibid.*). There was an aggregate production of 624 news reels in 1928 by six distributors (R., p. 87). The average exhibitor uses 104 news reels in the course of a year (R., p. 86).

These figures on production emphasize the severity of the competition in the industry.

2. Frequency of transfers of theatres.

There are approximately 25,000 motion picture theatres in the United States scattered all over the country (Defts.' Ex. D, R., p. 280). Each year there are several thousand sales or transfers of theatres by the owners or operators to new owners or operators, some of the smaller theatres being sold or transferred several times in a single year. The numbers of transfers during the last three years have been as follows (Defts.' Ex. A, R., p. 278):

Year	*Number*
1926	3,438
1927	3,950
1928	4,612

The aggregate amounts involved in uncompleted contracts of the theatres transferred during the two years before the trial were as follows (*ibid.*):

Year	*Amount*
1927	$7,297,374.13
1928	9,843,970.23

The amount of rentals of the uncompleted parts of the contracts which the purchasers did not assume were $2,111,547.88 for 1927 and $4,045,857.53 for 1928.

The Government (brief, pp. 35-36) challenges the probative force of Exhibit A from which the above sets of figures were taken, on the ground that the figures, "being based on the first reports of the credit committees, are unreliable as a true picture of the situation." Now the totals of uncompleted contracts for 1928 which were not assumed ($4,045,857.53) and of uncompleted contracts for the same year which were assumed ($5,798,-112.70) are both itemized in Exhibit D (R., pp. 280-281), where separate figures for 31 out of the 32 Film Boards of Trade are shown. By virtue of the stipulation (R., pp. 134-135), we have in the record the testimony of the Secretaries of but three of the Film Boards, Dallas, Atlanta and Omaha. The figures for these three Boards (for 1928) shown on Exhibit D are:

Region	*Transfers*	*Non-assuming Purchasers*	*Credit Information Refused*	*F. T.*
Dallas	251	107	22	3
Atlanta	282	185	4	2
Omaha	328	32	7	0

These figures substantially tally with those given concerning the situation *at the end of the year* in the testimony of the respective Secretaries of the Film Boards of Trade of Dallas and Omaha, to-wit: Douglas (R., p. 90), and Miss Foley (R., pp. 130, 136).*

The conflicting answers as to the final character of the figures given by Mrs. Drazin, of which the Govern-

* The Secretary of the Atlanta Board, Cole, referred (R., p. 126) to the figures for the contracts assumed as $154,000 and those not assumed as $450,000, and, while it is not clear that he is referring to the end of the year, this seems to be a fair assumption when comparison is made with Exhibit D.

ment complains (brief, p. 37), will be found on examination (R., p. 88) to concern those transfers only in which there were assumptions of outstanding contracts. There was no ambiguity as to the finality of the figures on transfers where contracts were not assumed. It is important to note that the testimony quoted at page 37 of the Government brief to the effect that information was not called for in such a way as to show final figures was directed to the year 1927. In 1928 final figures were shown (R., pp. 138-139).

3. Why transfers cause breaches of contract.

The transfer of a theatre makes completion of uncompleted contracts impossible unless they are assumed by the new owner for the reason that each contract calls for exhibition *at the theatre which is transferred,* and as the previous owner is no longer the operator of the theatre, he no longer has the authority to arrange for playing dates at the theatre. The contract does not permit the exhibition to take place at any other theatre than that specified in the contract (see Contract, Article Second and Article Third, R., pp. 49-50).

Since in the great majority of the cases there are outstanding at the time of transfer uncompleted contracts between the seller and some or many of the distributors for the exhibition of pictures at the theatre which is transferred (Douglas, R., p. 90; Cole, R., p. 122; Foley, R., p. 131), the distributors cannot view these transfers with indifference, but are entitled to know whether the transfer was for the purpose of avoiding contracts. *

---

* In 1928 out of 4,612 transfers there were only 422 transfers in which there were no uncompleted contracts for the exhibition of pictures at the theatre transferred (Defts.' Ex. A, R., p. 278). Usually there are outstanding contracts with from four to ten distributors when a theatre is transferred (Cole, R., p. 127).

It is also obvious that the distributors have an interest in getting data concerning the new owner or operator, as he will soon be doing business with many or all of them and handling their films under season contracts.

Mr. Douglas, Secretary of the Dallas Film Board of Trade, described the condition in his territory prior to the adoption of the Credit Rules, arising out of the changes of ownership of theatres. He testified (R., p. 106):

> "The condition in the motion-picture business prior to the adoption of the credit rules, arising out of the changes of ownership of theatres, was very chaotic in my territory. As I explained a while ago, I was a booker and office manager at that time. There were a number of transfers, even more than there are now. Some of these transfers, of course, were legitimate and quite a few of them were fraudulent, either for the purpose of avoiding all or part of the existing contracts or because exhibitors who could not get reductions of rentals or modifications of contracts which they thought they should have would have one of these fraudulent transfers, selling the theatre to a wife, brother, or sister, or somebody. At that time there was no bureau for collecting that information, and each distributor just relied on the information the best way he could get it."

4. Difficulty of mitigating damages.

If an exhibitor refuses to take a picture when it is released and available for exhibition, the distributor usually suffers a large or total loss of the earnings from the picture in the neighborhood or territory covered by such exhibitor's theatre. This follows from the custom

of theatres to contract for their picture programs months in advance, each exhibitor entering into contracts for the number of pictures required for a period of usually one year (Pet., part V, 4, R., p. 14). Therefore, when an exhibitor refuses to take a picture after it is released which he has contracted to take, the distributor is unable to relicense the picture in a theatre competing with that exhibitor's theatre for the reason that the available time of the competing theatre is already contracted for with other pictures. By the time the competing theatre has an open date, the picture has become an old one and no longer commands a good rental.

The damages following such a breach of contract are heavy and hard to mitigate. This factor is set forth in paragraph XI of the Answer, and was thoroughly established by testimony (R., pp. 108, 109, 129, 134). Since pictures are sold by the season, "it is very difficult to place that service with another exhibitor in that town or zone because that exhibitor has made the same contract for service as the other exhibitor" (R., p. 109).*

Mr. Douglas, Dallas Secretary, testified that it is almost impossible to salvage the contract except in certain seasons of the year (R., p. 109). He said:

> "Pictures are sold by the season and most exhibitors buy a season in advance. Every exhibitor does that, so when an exhibitor repudiates a contract it is very difficult to place that service with another exhibitor in that town or zone because that exhibitor has made the same contract for service as the other exhibitor.

---

* The distributor's duty to observe the provisions of the Standard Exhibition Contract on "protection" (R., p. 50), which prevent him from licensing a second exhibition of any given picture in that locality until the lapse of a certain number of days after its previous run, operates as an additional obstacle to the mitigation of damages.

> "Another thing is that a motion picture is worth the most money when it is new. When it is first released, it is the most valuable. The older it gets the less it is worth. So if a distributor did resell a picture, it would be months after the release date and for far less consideration than that originally called for under the contract or than they expected to get under their contract.
>
> "All these conditions resulted in heavy losses prior to the adoption of the credit rules. * * *"

And see Cole, R., p. 122, *infra*, p. 23.

Placing pictures is a costly process. Frequently the smaller towns are difficult of access and it is by no means a certainty that a distributor who has become the victim of a breach of contract will succeed in making a contract with the new owner before some other distributor does so (R., p. 129; and see R., p. 134). Often the first news of a transfer of a theatre which the distributor received was from the carrier or express agent, who would notify him of the rejection of his film (R., pp. 102, 106).

The right to institute suits against exhibitors who have broken their contracts by a transfer of their theatres or otherwise is not an efficacious remedy. The secretary of the Dallas (Texas) Film Board of Trade, who had nearly eleven years experience in the motion picture business (R., p. 89), testified that in only 5% of the cases where contractors had left uncompleted contracts and given up their theatres would litigation be justified (R., p. 99).

Douglas also said: "I do not know of a single judgment that has been collected and we have had quite a few suits" (R., p. 99).

Often the transfer is made to a relative of the owner (R., pp. 103, 104, 220) or to one of the operators (R., pp.

123-124, 191-192). Of course, this is done for the purpose of giving the owner a convenient method of avoiding his obligations.

Practically all of the theatres which change hands under circumstances causing breach of contract are held by the exhibitors on leases (R., p. 99)—a further reason why judgments are difficult to collect. On this point Miss Foley testified (R., p. 131):

> "The majority of these transfers are transfers from lessee to lessee. These transfers are almost always of small theatres. There have been only a very few large theatres changing hands since I have been secretary. In the small towns it is almost always the case that the theatres are operated by men who conduct that as a side line—that is, by men otherwise engaged in other businesses. In large cities the exhibitor makes it his principal business. In the small towns somebody not connected with the film business frequently comes in on these transfers."

The futility of litigation has a direct bearing on the scope of legitimate credit protection, as we shall show *infra*, p. 41.

POINT II.

The effect of the credit rules has been to diminish the number of fraudulent transfers; the rules have benefited the industry and improved its ethics.

Since the standard exhibition contract calls for the exhibition of pictures by a designated exhibitor at a designated theatre (Standard Exhibition Contract, R., p. 49), an exhibitor by the act of transfer disables him-

self from performing the contract, unless the purchaser assumes the contract.

If an exhibitor had contracted for more pictures than he could show, and this situation had become a frequent occurrence (Opinion, R., p. 70; and see Douglas, R., p. 91), he would simply transfer his theatre to an operator or some one employed about the theatre, or to a relative (R., p. 109) and decline to accept any further pictures (R., p. 106). And he had the more audacity in so doing because he was presumably aware that litigation under such circumstances had come to be recognized by the distributors as futile (Cf. R., p. 99).

The Credit Rules have proved effective remedies for the evils they were designed to correct.

The witness Douglas testified (R., p. 109):

> "All these conditions resulted in heavy losses prior to the adoption of the Credit Rules. The *effect of the three years' operation of the Credit Rules has been to minimize fraudulent transfers.* We still have fraudulent transfers, but not in the great number we formerly did. The exhibitor now has a greater respect for his contract. I think that is the greatest accomplishment of the work of the Credit Committee." (Italics ours.)

And as to the increase in instances of assumption of contracts by purchasers, and as to the greater initial prudence displayed by exhibitors in estimating how many pictures they ought to book, he said (R., p. 109):

> "Formerly in transfers not more than five or ten per cent. of the contracts were ever assumed. In the Dallas territory now about fifty per cent of the contracts are assumed in transfers. Conditions before the establishment of the Credit Committee were such that the exhibitor did not have to

exercise a great deal of judgment in making contracts. He could make a contract for all the pictures on the market and buy three times more than he could use, and if he wanted to get out of these contracts he would perform a fraudulent transfer or do something else. Under these Credit Rules the contracts are respected and they have made the exhibitor a far more cautious and prudent business man then he was before."

The right of the distributors to demand security on new contracts in F. T. cases discourages fraudulent transfers. "When the fraudulent owner discovers he is going to have to secure the new contracts, he may elect to fulfill the existing contracts" (Douglas, R., p. 109).

Mr. Cole testified (R., p. 122):

"Prior to the Credit Rules, January, 1926, when you got a contract you did not know whether you had one or not, because exhibitors, especially among smaller theatres, were constantly changing hands. The companies paid no attention to whether it was a legitimate transfer or not and simply transferred the contracts off their books. There was so much room for fraud because a man just dumped his contracts anyhow when they sold out, and the companies lost a lot of money in the way of film rental and of expense in sending salesmen into these hick towns to get contracts [theatres in] which would sometimes change hands as many as six times a year.

"Since the Credit Committees have been operating, the small owners by a system of education have been able to see that they could transfer their contracts to the new owner without working any hardship on him and not only working no hardship on him but relieving themselves of their obligations under the contracts. If an exhibitor sells a theatre without making arrangements for taking

> care of his contracts, the old owner is still responsible for the amount of the film rental involved under these contracts."

Miss Foley testified (R., p. 132):

> "The exhibitors do not have any difficulty in obtaining pictures or contracts for pictures. If there had been such a condition, I would have been in position to observe it because every credit which is passed on comes to me. I am the one that knows it. I would be the only one who would know about it. The credit committee would not know about it without my knowing about it also, because I gather together the facts and present them to the credit committee."

The gain from the operation is not confined to the distributors. We have described (see our brief in the *Paramount Case,* pp. 6, 52-54) the manner in which exhibitors contract for rights in a particular film to be enjoyed *seriatim,* and the consequent disruption of a series of contracts following one exhibitor's breach.* Any rule, therefore, which discourages such breaches, produces a beneficial effect which is felt by all the exhibitors.

In the last analysis, therefore, the activities of the defendants complained of in this case have the effect of avoiding interruption of interstate commerce and thus promoting the free flow of commerce. Judge THACHER said (Opinion, R., p. 70):

---

*"So if the exhibitor had a contract in one of these zones and attempted to repudiate the contract, the contract itself would not only be a vital loss to the distributor but it might affect other succeeding contracts with subsequent run exhibitors. We have had situations where the third run account in a town sold out or had to undergo some changes and he disrupted the situation in the entire town. It required the rewriting of every subsequent run contract in that town. The town in question was Fort Worth and affected some fifteen or twenty theatres" (Douglas, R., p. 108).

"Reasonable arrangements have been encouraged under which persons acquiring theatres for which films have been booked long in advance have assumed the performance of existing contracts, thus avoiding serious interruption of interstate trade, inherent in the old abuses."

POINT III.

The Credit Rules are normal and reasonable trade regulations.

Although the distributors have been operating under the Credit Rules since January, 1926, there is no testimony that any injury has been suffered by anyone.* This is due to the fact that the rules regulate the business of the distributors in a way tending to promote rather than to restrain legitimate trade and do not go beyond what is reasonably necessary to correct specific abuses arising out of transfers of theatres. It was proper for the appellees to endeavor by mutual co-operation to salvage something from the heavy financial losses occurring each year on account of the breaches of contracts by exhibitors who had transferred their places of exhibition. The amount of rentals of uncompleted contracts of previous exhibitors no part of which were assumed by purchasers rose from $2,111,547.88 in 1927 to $4,045,857.53 in 1928 (R., p. 279, *ad fin.*), so that the Government's assertion (brief, p. 35) that the Credit Rules "transfer certain losses from the highly organized distributor group to the largely unorganized exhibitors" seems unjustified (see *infra,* pp. 47-50). Incidentally, there is no

* Cf. Opinion, R., p. 69: "No exhibitor has complained, and no injury is shown either to individuals or to the general public."

evidence that the exhibitors were unorganized, and in view of the evidence in the *Paramount Case*, the Government's statement to the effect that the exhibitors are largely unorganized is somewhat startling.

No honest exhibitor has reason to complain of the Rules. They help to prevent dishonest exhibitors from securing unfair advantages through unfair practices. In short, only an exhibitor who is looking for an unfair or dishonest advantage, or is seeking to avoid contracts by a fraudulent transfer, has cause to object to the rules and regulations of the Credit Committees.

1. The Decisions.

In *Chicago Board of Trade* v. *United States*, 246 U. S. 231 (1918), it appeared that the members of the Chicago Board of Trade were bound by a rule known as the "Call Rule", which prohibited members from purchasing between about two o'clock in the afternoon and the opening of business the next day any wheat, corn, oats or rye "to arrive" at a price other than the closing bid at the call, which was usually over by two o'clock in the afternoon. In a suit brought to enjoin the enforcement of the Call Rule as being in violation of the Sherman Act, the Government maintained that the intended effect of the regulation was to bind members to bid a uniform price to purchase grain at country points for Chicago delivery between the close of the call and the opening of the session on the following day; that it was an agreement fixing prices during an important part of each business day and was therefore in restraint of trade, and that the necessary effect was to unduly restrict competition.

The Government further contended that most of the benefits claimed for the rule were not attributable to that part of it which the Government attacked, that is to say, the price-fixing element.

This Court, however, refused to follow the lower court in condemning the rule, saying, in effect, that every agreement concerning trade restrains trade and that the true test is whether it merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. The Court said (pp. 238-239):

> "The Government proved the existence of the rule and described its application and the change in business practice involved. It made no attempt to show that the rule was designed to or that it had the effect of limiting the amount of grain shipped to Chicago; or of retarding or accelerating shipment; or of raising or depressing prices; or of discriminating against any part of the public; or that it resulted in hardship to anyone. The case was rested upon the bald proposition, that a rule or agreement by which men occupying positions of strength in any branch of trade, fixed prices at which they would buy or sell during an important part of the business day, is an illegal restraint of trade under the Anti-Trust Law. But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question *the court must ordinarily con-*

> *sider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed;* the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because *knowledge of intent may help the court to interpret facts and to predict consequences.* The District Court erred, therefore, in striking from the answer allegations concerning the history and purpose of the Call rule and in later excluding evidence on that subject. But the evidence admitted makes it clear that *the rule was a reasonable regulation of business consistent with the provisions of the Anti-Trust Law.*" (Italics ours.)

The attempt of the Government (brief, pp. 32-33) to distinguish this case by minimizing the effective range of the restraint therein upheld and magnifying the scope of the restraint in the case at bar, should not succeed. In the motion picture industry, there are 25,000 theatres of which 4,612 were transferred in 1928; of these all but 422 were made while uncompleted contracts were outstanding; and yet only 175 were marked F. T. in 1928 and of these only 30 transfers remained on the F. T. list at the end of the year (R., pp. 278-279). This does not seem a broad restraint. To say the Rules "make it possible to cut off from exhibitors their entire supply of films, and for an unlimited period unless they met the conditions imposed by the distributors" (brief, p. 33) is to ignore the provisions whereby a transferee whose transfer is under investigation may get films either by spot booking, or by assuming one or more of his trans-

feror's contracts, or by putting up security, or by dealing, in some cases, with non-member distributors, and involves losing sight of the fact that no one but a fraudulent transferee or one who has refused to answer the questionnaire, is under any restraint beyond a brief period.

If the restraint in the *Chicago Board of Trade Case* escaped condemnation because of its limited field, we submit the restraint in the case at bar is no broader. But we also submit that the decision is of larger effect than the Government admits and that it is good authority for the decision in the case at bar.

In *Cement Manufacturers Association* v. *United States,* 268 U. S. 588, 604 (1925), this Court said:

> "In *Swift & Co.* v. *United States,* 196 U. S. 375, 395 [1905], this Court approved a decree which provided that defendants should not be restrained 'from establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers'. Distribution of information as to credit and responsibility of buyers undoubtedly prevents fraud and cuts down to some degree commercial transactions which would otherwise be induced by fraud."

There are two District Court decisions under the Sherman Act in which the validity of credit rules was recognized.

In *United States* v. *King,* 229 Fed. 275 (D. Mass., 1915), the Court said (p. 278):

> "Persons have a right to associate for the purpose of advancing their own interests by discriminating against other persons, if such discrimination is based upon proper and legal

> grounds, e. g., failure to pay bills due to members of the association (Brewster v. Miller, 101 Ky. 368, 41 S. W. 301), and is not merely coercive and arbitrary, as in Martell v. White, 185 Mass. 255, 69 N. E. 1085; nor for the purpose of restraining interstate trade, as in Eastern States Lumber Association v. U. S., 234 U. S. 600."

In *United States* v. *Fur Dressers' & Fur Dyers' Association, Inc.*, 5 F. (2d) 869 (S. D. N. Y., 1925) the members of the Association had agreed that they would not do business save on a cash basis with dealers who had not discharge their overdue debts to the wholesalers, the members of the Association. In dismissing a petition under the Sherman Act, Judge BONDY said (p. 873):

> "The association simply regulated business of its members in a way tending to promote, rather than restrain, legitimate trade. Nothing that the association did or could do under its by-laws was injurious to any of its members or the public. No one, except a person looking for an unfair or dishonest advantage, could object to its regulations."

The Government purports to distinguish this case by saying (brief, p. 34) that the rules in the *Fur Dressers Case* "applied against delinquent debtors, whereas here the rules are applied against those not in any default on their contractual obligations." But, as we have observed, the Credit Rules are directed against transfers made for the purpose of avoiding uncompleted contracts, to persons who are almost certainly in collusion with the transferor.* The transferees at whom the Rules are

---

*Cf. Opinion, R., p. 71: "The purchaser, who must be assumed to have knowledge of the business upon which he is about to embark, almost certainly knows that any going theatre has such contracts outstanding, and that the conveyance of the theatre without any assumption of these obligations will necessarily result in their breach."

aimed may not have defaulted on their own contracts, but they are aiders and abettors of those who have.

The principle that concerted action against delinquent debtors is not actionable and that, as a result, to include a man's name on a circulated list of such persons may not be made the basis of an action for libel if he is in fact delinquent, was sustained in the following cases:

Putnal v. *Inman*, 76 Fla. 553, 556, 80 So. 316 (1918);

Brewster v. *Miller's Sons Co.*, 101 Ky. 368, 381, 41 S. W. 301 (1897);

Reynolds v. *Plumbers' Protective Assoc.*, 30 Misc. (N. Y.) 709, 712, 63 N. Y. Supp. 303 (1900);

Delz v. *Winfree*, 6 Tex. Civ. App. 11, 25 S. W. 50 (1894);

Woodhouse v. *Powles*, 43 Wash. 617, 621, 86 Pac. 1063 (1906).

In *Putnal* v. *Inman* (*supra*), the legality of delinquent debtors' lists was brought up in an action for libel; the Court denied a recovery on the ground of privilege, saying (p. 556):

> "In order that merchants may prudently do a credit business, it is expedient for them to know those in the community who meet their obligations promptly and those who do not, and they have the right to organize and enter into mutual agreements, for the purpose of giving each other the benefit of their knowledge on these subjects, and a communication made by a member of the association to the other members, is privileged, if made in good faith and in such a manner and on such an occasion as to properly serve the purpose of the association."

In this case, the plaintiff was improperly listed as delinquent. Nevertheless a judgment for the plaintiff was reversed, the proof establishing that the list was not shown to any persons except members of the Association. The Court was careful, moreover, to point out the fact that this scheme was (p. 554)

> "not the same as blacklisting or boycotting by refusing to trade with him, but is only an agreement not to extend him credit without assuming whatever indebtedness he may owe to any other member of the association."

In *Delz* v. *Winfree* (*supra*), the Court sustained an agreement among defendants to refuse to do business on any terms with a debtor. The plaintiff, who was a butcher, charged conspiracy against three concerns, alleging that they conspired to refuse to sell to him live stock and to ruin his business. The defense was that the plaintiff was indebted to them and for that reason they refused to sell. The Court held that it was proper for the defendants to agree that neither of them would sell to the plaintiff when he was indebted to any one of the defendants, saying (pp. 14-15):

> "We conclude from the evidence that there was an agreement between the defendant firms that neither of them would sell animals for slaughter to any butcher who was indebted to the other, if the latter so requested; and that in pursuance of this agreement both of said firms did refuse to sell to plaintiff, and that thereby his business was rendered much less profitable. That the agreement between the defendants, that each firm would refuse, upon the request of the other, to sell to any butcher who might be indebted to the latter, was not made with special reference to plaintiff, and

that the same was made by defendants for their mutual protection against dishonest and insolvent customers, and for the purpose of compelling such customers to pay their debts due the defendants, or either of them, and not with the intention to injure plaintiff or any other butcher in his business.

* * * * * * *

"It would seem, therefore, that since each of the defendants had the unquestionable right to refuse to trade with the plaintiff, or any other butcher who might desire to buy from them live animals, that *the defendants without malice to any one, and for the lawful purpose of protecting each other from dishonest or insolvent customers, and otherwise mutually assisting each other in the conduct of their business, might agree that each upon the request of the other would refuse to deal with any butcher.* Cooley on Torts [1879], 125; Delz v. Winfree, Norman & Pearson, 80 Texas, 400 [1891], and authorities therein cited." (Italics ours.)

a. *The cases cited by the Government are distinguishable.*

The Government's invocation (brief, pp. 21-23) of the type of case illustrated by *Eastern States Lumber Association* v. *United States,* 234 U. S. 600 (1914), *Montague & Co.* v. *Lowry,* 193 U. S. 38 (1904) and others, proceeds from a misconception of the purpose of the Credit Rules. They were not designed to shift losses caused by breaches of exhibition contracts from the distributors to the transferees of theatres, but were designed to make more difficult and less frequent transfers where the established purpose of the transferors was "to evade their contractual obligations by colorable transfers of title to their theatres" (Opinion, R., p. 66).

In the cases cited by the Government to uphold their contentions, the concerted action where condemned was directed towards an unlawful object. Thus, in *Eastern States Lumber Assoc.* v. *United States, supra,* the object of the conspiracy was to prevent wholesalers from selling directly to the customers of retailers; in *Montague & Co.* v. *Lowry, supra,* the result was to narrow the market and enhance prices; in *Loewe* v. *Lawlor,* 208 U. S. 274 (1908), the object was to boycott the plaintiff's goods in order to compel him to unionize his shop; in *Binderup* v. *Pathé Exchange, Inc.,* 263 U. S. 291 (1923), the charge was that certain distributors from whom the exhibitor had refused to buy induced the other distributors to cease dealing with him, and that they all then combined to prevent him from carrying on his business, the direct result of the alleged conspiracy not to sell to the exhibitor being to put an end to his participation in that business; and in *Anderson* v. *Shipowners Assoc.,* 272 U. S. 359 (1926), insufficient reasons were shown for the necessity of the concerted action regulating the employment of seamen.

In Sherman Act cases it is always proper to see whether the contract or combination assailed has any "main lawful purpose, to subserve which partial restraint is permitted * * *". *United States* v. *Addyston Pipe & Steel Co.,* 85 Fed. 271, 283 (6th Circ., 1898), modified and affirmed 175 U. S. 211 (1899). The *Swift Case* and the *Chicago Board of Trade Case,* as well as the other cases cited *supra,* pages 26-32, show that "to protect the defendants against dishonest or irresponsible" debtors is a purpose of recognized legitimacy.

The Government argues (brief, p. 27) that the line of demarcation between illegality and legality, as indicated

by the decisions of this Court, is whether there is an actual or implied agreement for concerted action, or whether there is complete freedom of individual action. One would have thought that in view of the decision of this Court in the *Chicago Board of Trade Case* no such argument would be seriously urged.

2. Reasonable measures against losses by fraudulent debtors are forms of credit protection.

The fair measurement of a credit risk in any business is the power and capacity of the debtor to cause damage to the creditor. If the damage ensuing upon a breach is not confined to the sums payable as rent on films but may far exceed this sum, the credit extended in dealing with an exhibitor must be measured by such larger sum.

The Government in effect argues that the meaning of the word "credit" is confined to capacity to pay and that questions not directly relating to such capacity are not proper questions in an investigation of a man's credit. On the contrary, in the motion picture business, it is not the amount of money the exhibitor has in the bank which determines his rating as much as his moral responsibility—his capacity to realize that the performance of an exhibition contract involves not only paying money but doing things, *e. g.*, forwarding films, in accordance with his undertaking.

It is likewise clear that his disposition to avoid defrauding distributors and to continue the existing contracts, which license exhibitions at the theatre acquired and at no other, is a factor inseparably connected with his moral responsibility and his credit.

The definition of the word "credit" as used in commerce is stated in Webster's New International Diction-

ary as follows: "Trust given or received; expectation of future payment for property transferred, or *of fulfillment of promises given;* the relation existing between one person and another who trusts in him to pay or *render something in the future;* mercantile reputation *entitling one to be trusted.*" (Italics ours.)

Miss Foley, Secretary of the Omaha Film Board of Trade, said (R., p. 134):

> "An exhibitor may not have a great deal of money in the bank but he may become a very good exhibitor. He can operate his theatre and be able to pay his film rentals. * * *
>
> "Whether or not an exhibitor is going to observe his contractual obligations is what we are interested in; that is the thing we are looking into. Those are the questions that affect credit in the motion picture business not the amount of money in the bank, because contracts are made calling for a large number of pictures and these contracts are all made at the beginning of the year and the producing companies base their figures on the amount of money they are planning on those contracts as revenue. If that money does not come in from those contracts they lose their money. It is very difficult to replace contracts."

It must be borne in mind that the practice of granting protection to exhibitors (described *supra,* p. 19n.) results in the distributors depending upon the particular exhibitors with whom they have a contract for their entire revenue for those pictures from that particular locality.

Furthermore, failure to perform will disorganize the playing arrangements with the exhibitors having subsequent rights (R., p. 108, *supra,* p. 24).

Information bearing on the likelihood that the exhibitor will perform *all the terms* of his contract is therefore legitimate credit information, and Credit Rules and Credit Committee functions which deal with the collection of such information and with the consequences of an exhibitor's failure to furnish it, are, we submit, Credit Rules properly so-called, and lawful under the authorities. To say, as the Government does (brief, p. 27), that the Credit Committees' operations were for a purpose "entirely divorced from the question of credit standing" is to overlook the fundamental principles and practices of the motion picture industry (R., pp. 84-86).

It would be a rather surprising doctrine to the business world if financial losses due to fraudulent transactions of customers were not considered as matters affecting credit.

a. *The questionnaire is legitimate.*

Prior to the adoption by the defendant distributors of the Credit Rules about January, 1926, the distributors had no adequate means of securing knowledge of the fact that a theatre had been transferred. Mr. Douglas testified (R., p. 102):

> "In a great many cases prior to the formation of the credit committees one of the usual ways in which the distributor heard about a transfer was through the rejection of the film when it was sent out to the country. Very seldom did we ever receive notice of a change of ownership, fraudulent or otherwise."

And see to the same effect R., pp. 106-107.

The distributors were equally without means of obtaining pertinent information relative to a new owner

or operator of a theatre. In the event of the transfer of a theatre which is likely to occur in a remote town, there was at that time no bureau of information or office from which a distributor could obtain information on pertinent matters, such as the number and status of uncompleted contracts, the previous experience, if any, of the new operator, in the motion picture business, which, if any, of the uncompleted contracts he intended to assume, his financial standing, the condition of the projection equipment, seating capacity, policy of the theatre, that is, whether it shows vaudeville, number of days open each week, admission prices, time of first performance, name of person, firm or corporation operating such theatre, name of person authorized to sign contracts, and whether the theatre was owned or leased.

All the foregoing matters and others are covered by the questionnaire (R., pp. 29-30). Is it not a reasonable requirement to ask the new operator to fill out the questionnaire?

One of the defendants' exhibits gives the number of instances in which credit information was refused (Defts.' Ex. A., R., p. 278). In 1928 there were 974 cases in which credit information was not given at the first request, but during the year, the large majority of these furnished credit information, so that at the end of 1928 only 183 names remained on the C. I. R. list. There were 611 transfers in 1926, and 510 in 1927 in which credit information was not given in the first instance (R., p. 279). Doubtless many of these later furnished credit information.

Substantial compliance with the questionnaire is all that is called for (Douglas, R., p. 107; and cf. Cole, R., p. 127).

If the new owner has assumed all contracts, he is not required to submit the questionnaire. If he is willing to assume the contracts for exhibition at the theatre which he is acquiring and under which the distributor has obtained rights prior to the new owner's acquisition of the theatre, there is a fair presumption that the new owner will have respect for the contract which he expressly assumes. One who so assumes contracts is generally honest.

Nevertheless, "many new owners are accepted as responsible who do not assume the contracts" (Foley, R., p. 131). And it is not necessarily a bar to acceptance of the new owner that at the time of transfer the transferor was in default on an award (Douglas, R., p. 115). The distributors may prefer to "take a chance" on the new owner rather than on the irresponsible former owner (*ibid.*).

The information required by the Credit Committee is confidential and is disclosed only to members of the Film Board of Trade (Rule III, R., p. 26).

Mr. Douglas testified regarding the facts considered by the Dallas Committee (R., pp. 107-108):

> "We are particularly interested in knowing if the purchaser is going to assume and fulfill the existing contracts, for the reason that in the smaller towns particularly there are always 150 to 200 pictures under contract. Sometimes all of them are dated for future exhibition, possibly six, eight, or ten months in advance. We want this credit information, and we want a declaration from the purchaser to know whether or not the contracts are going to be performed, so that we can notify the creditors whether they shall continue to reserve his dates or withhold them and try to place them with some other exhibitor.

"That information is necessary to salvage a contract either in the same town, or if the date is not going to be respected it may be withdrawn and an attempt made to put the picture and print in some other town. Otherwise the print would remain in the distributor's vault and not earn any revenue and be a dead loss.

* * * * * * * * * *

"When the members receive a credit report they know what disposition is to be made of their existing contracts, and this is very vital to them. If the purchaser says he is going to assume the contracts, the members understand the pictures will be taken and they continue to reserve the bookings, which in the contract are for the benefit of the purchaser. If the purchaser says he is not going to assume the contracts, the members usually cancel the dates."

Two questions asked on the questionnaire have a bearing upon credit more direct than may appear on first impression. One of these is to give the names of theatres theretofore conducted. This reflects on credit because an inexperienced exhibitor may overbuy (*i. e.*, lease more films than he can show), or may damage prints, or fail either to return them promptly to the exchange or forward them to the next exhibitor; furthermore, if a new owner has been in the business before, some member of the Credit Committee or the Board Secretary may know about his reputation (R., p. 107). The other question is whether the theatre is owned or leased, and if the latter when does the lease expire.*

---

* Miss Foley testified (R., p. 130) that the Credit Committee asks the new owner for the bill of sale or lease. If he will not submit it then they try to get the bill of sale from the old owner or any agreement he may have with the new owner. "The majority of these transfers", she added (R., p. 131), "are transfers from lessee to lessee."

Mr. Douglas said (R., p. 99): "Practically all of these theatres changing hands are lease propositions. The theatres in small towns where purchasers are reported, or they claim they are purchasers, are nothing more than lessees." And see R., pp. 103, 124.

The questionnaire also asks whether the purchaser has assumed or will assume the seller's contracts. Information of this nature is rightly regarded as credit information because a purchaser indicates by his willingness to take over these contracts that he is a man who would take care of his obligations. Furthermore, such information is essential in connection with the distributors' mitigation of damages. They have to know whether "to continue to reserve his dates or withhold them and try to place them with some other exhibitor" (R., pp. 107-108).

For the losses caused to the distributors by transfers, litigation was, as we have seen (*supra*, p. 20), an ineffective remedy. Hence the "obvious business task" (to employ the language of the Opinion, R., p. 71) was to persuade the new owner who was continuing the business to make a fair adjustment,—in other words, to assume the old contracts, or at least undertake a partial assumption by way of a fair adjustment.*

We submit that Judge THACHER gave a clear and fair account of the situation when he said (R., p. 71):

> "If it be said that such a purchaser is under no legal obligation to assume the improvident contracts of his predecessor in title, it may be answered that the willingness of men to deal with one another is properly influenced by an expectation of fair dealing without insistence upon the pound of flesh, and that one not disposed to attempt to reach fair adjustments cannot fairly demand from those who are injured new contracts without some security. The defendants' agreement to demand security was fully justified by their common interest in preserving the integrity

* "Distributors, it appears from the evidence [R., pp. 95, 104, 115, 116, 131], were always willing to meet the exhibitor's business necessities to scale down the contract requirements and, if desired, to substitute pictures [R., pp. 91, 131] for those contracted for" (Opinion, R., p. 71). And see the *Lytton Theatre Case* described in the Appendix, *infra*, p. 63.

of contractual obligations owing to them by others. Such restraints as may have resulted from what was done were incidental to this legitimate purpose, and therefore not unreasonable or unlawful" (Opinion, R., p. 71).

3. The ten-day period of investigation during which the new owner may "spot book" pictures prevents any unreasonable inconvenience to him.

When news of a transfer has been received, a questionnaire is sent to the new owner (Rule IV). For the next ten days, while distributors will serve him on contracts of the old owner assumed by him or assigned to him with his consent (R., p. 54), they will not make season contracts with him, but will "spot book" pictures for exhibition at his theatre (R., p. 127). This enables him to keep his theatre open. And see R., p. 132. If the questionnaire is not answered, the new owner is listed as C. I. R. (credit information refused)*; if the answers show circumstances indicative of fraud, the new owner is listed F. T. In such case, orthodox status is withheld; but even then he may get pictures by putting up security, or by assuming one or more of his transferor's contracts, no security being called for, or, in some cases, by dealing with non-member distributors.

The distributors generally were willing to scale down the number of pictures, or to revise prices downward, or to substitute new pictures for old in an endeavor to meet the requirements of the new owner (R., pp. 91, 95, 97, 104, 115, 116, 131, 135, 136). Judge THACHER's finding to this effect (R., p. 71) is a persuasive practical answer to the Government's contention (brief, p. 35) that the Rules may be used "to impose on the new owner the unsuccessful policy of his predecessor."

Douglas said (R., p. 109):

* For an exceptional definition prevailing at Dallas, see p. 49, *infra*.

> "That provision or agreement with respect to security does not tend to cut off the supply to the purchaser. If he does not want to put up security, service is always continued on existing contracts or whatever contracts he is willing to take" (R., p. 109).

The question is, does the interposition of the ten-day period of investigation seriously inconvenience the innocent transferee?

We may leave to one side the exceptional case of the purchaser who has arranged for a supply of pictures before taking over the theatre (Douglas, R., p. 108).

If the purchaser has not arranged for his pictures in advance of purchase, it works no hardship on him to ask him to wait ten days before he makes contracts. In the ten-day interval, and indeed for a considerable period thereafter, the custom of the trade (R., pp. 85, 109, 120) is such that spot-booking is no mere makeshift but is the natural way to take care of immediate requirements. And it must not be overlooked that the new owner often makes selections from the uncompleted contracts of his transferor and assumes one or more of them without depositing security under any of them (*supra*, pp. 28, 29, 41, 42; Douglas, R., pp. 101, 109).

Mr. Douglas testified (R., p. 108):

> "In some cases the purchasers of theatres come in to see me or the credit committee before the purchase and arrange for their pictures in advance. We try to encourage them to do that.
>
> "During the period of investigation the purchaser may continue service on the existing contracts. If the former owner had pictures dated, the distributors are not going to suspend the service or cancel those dates until they are told to do so, either by the former owner or the purchaser. So the purchaser may either continue the service on those contracts or he may spot book on his

> own account until the credit report is passed upon by the committee."

Moreover, the Rules do not prevent, from the start of the ten-day period, adjustments between the distributor and the new owner of the uncompleted contracts of the previous owner.* That is a matter between the distributor and the exhibitor (R., p. 106). Douglas testified (R., p. 104):

> "There is nothing in our rules to prevent a distributor adjusting a contract of the previous owner with the new owner. It is done all the time."

Mr. Cole, Atlanta secretary, testified (R., p. 127):

> "During the spot booking period any new owner always can take pictures under any of the contracts of his predecessor. He can assume any one or all of those contracts without any security whatsoever. In our territory he can not only assume any one of the contracts but he can assume any portion of any one of the contracts that he wants to. For instance, if Universal has 40 features, 42 comedies, 42 news reels, he may say, I will take the features but I don't want the news and the comedies, and we will let him take the features, thus salvaging all that we can."

Mr. Douglas testified to the same effect (R., pp. 101-103).

Miss Foley testified (R., p. 131):

> "Under the rules in our territory members are permitted to adjust uncompleted contracts of the previous owner with the new owner and they do so. In our board the members are permitted to re-

* See the excerpt from the Opinion (R., p. 71), quoted in the footnote, *supra*, p. 41.

write contracts even; if the exhibitor comes in and the distributor will sell him a new contract the old contract goes out and a new contract may be sold to him for the same number of pictures or a lesser number, with possibly a different rental and different pictures. We do not allow the members to sell more than they have under the contract with the old owner. If they had 50 features and 50 comedies, they could not sell to the new owner more than 50 features and 50 comedies. The amount of revenue does not enter into it.

"If the man needs more pictures, he will have more than one contract to assume. I spoke of just one contract; no doubt there will be four or five contracts. If he assumes all the old contracts then the matter goes out of our hands if the new owner has submitted credit information and his credit is established. Many new owners are accepted as responsible who do not assume the contracts."

4. The rule requiring security of a transferee of a theatre where the transfer is listed as fraudulent, or where credit information is refused, is reasonable and does not occasion any hardship.

The Rule requiring the defendant distributors to demand security of a new owner or operator of a theatre who has been listed as F. T. is being observed by defendants reasonably and fairly, and without occasioning hardship to any one (R., pp. 70, 131-132). It enables the distributors to salvage by fair means some part of the uncompleted contracts. The vast majority of new owners are given favorable credit ratings promptly (Defts.' Ex. A, R., p. 278).

Mr. Douglas defined an F. T. transfer as follows (R., p. 109):

> "We consider a fraudulent transfer is one where the party is selling his theatre, usually to an operator or someone employed about the theatre, or particularly a relative, for the purpose of avoiding either an arbitration award or for the purpose of avoiding the fulfillment of his existing contracts."

See also Rule VI (R., p. 27).

In determining the amount of security, not exceeding $1,000, to be demanded, the Credit Committee considers such facts as are pertinent and helpful in reaching a fair and reasonable conclusion. The Rules provide on this subject (R., p. 27):

> "The credit committee in determining the amount of such security shall consider the total of the rental of pictures likely to be contracted for and the frequency of the possession by the exhibitor of prints of such pictures."

Moreover, it is to be remembered that an F. T. rating is not a permanent rating. Rule VIII provides that the Credit Committee may from time to time upon satisfactory evidence of the credit standing of any new owner, remove from the Credit Information List the name of the theatre owned or operated by such new owner, and in such case the members of the Film Board of Trade are free to contract with such new owner without requiring the new owner to deposit cash security as a condition for the making of a contract (R., p. 28).

It should be remembered that while the limit of security is placed at one thousand dollars, it is extremely rare for any such amount to be required. The amount of

deposit usually required is usually small, ordinarily from $50 to $200, although sometimes it is higher (Cf. R., pp. 100-101).

That the operation of the Rules is concentrated on the fraudulent transfers, is evidenced by the fact that the number of cases reported as F. T. is far less than, and exhibits no relation to, the number of cases where purchasers have not assumed any part of the uncompleted contracts. If it had been the intention of the appellees, as charged by the Government, to coerce purchasers into assuming uncompleted contracts, the number of F. T. cases should approximate the number of purchasers refusing to assume any part of the uncompleted contracts of previous exhibitors.

The transfers reported as fraudulent transfer for 1927 and 1928 were as follows (Defts.' Ex. A, R., p. 279):

1927	212*
1928	175†

The number of purchasers refusing to assume any part of uncompleted contracts of previous exhibitors were (Defts.' Ex. A, R., p. 278):

1927	1,237
1928	1,653

While the Government claims unfair results are possible, the results are shown to be quite the opposite in fact.

There is a statement in the Record showing in regard to each Film Board of Trade for 1927 and 1928 the number of (1) theatres, (2) transfers, (3) purchasers refus-

* Many of these were cleared during 1927, but figures are not available.
† During the year 145 of these were cleared, so that only 30 remained on the F. T. list at the end of 1928.

ing to assume any part of contracts, (4) purchasers assuming all or part of contracts, (5) amounts involved, (6) favorable credit ratings, (7) cases in which credit information was refused, and (8) cases reported as "fraudulent transfer" (Defts.' Ex. D, R., p. 280). An examination of this exhibit discloses that *in the great majority of cases the number reported as fraudulent transfer bears no relation to the number of purchasers refusing to assume any part of contracts.* For instance, to take the first Board, Albany, the number of transfers in 1927 was 48, and in 1928, 65. In each year 21 purchasers refused to assume any part of the contracts. In each year there was no case which was reported as a fraudulent transfer in Albany (*ibid.*).

In Atlanta, out of 102 transfers in 1927 and 282 in 1928, 43 purchasers in 1927 and 185 in 1928 refused to assume any part of contracts; but in 1927 only 8 cases were reported F. T. on the first report and in 1928 only 2 at the end of the year (R., p. 124).

In Dallas, out of 85 in 1927 and 107 in 1928 who refused to assume any part of contracts, 10 were reported F. T. on the first report during 1927 and only 3 or 4 at the end of 1928 (R., p. 90).

The Government maintains (brief, p. 35) that the aim of the Credit Rules was to shift losses from distributors to transferees of theatres and not (as the appellees maintain) to reduce the number of fraudulent transfers.

The results show an increase in losses suffered in 1928 over 1927 and a decrease in fraudulent transfers. The contention of the appellees is borne out by the results; that of the Government is not.

The Government's attitude seems to be that the small number of F. T. ratings has little significance. This, of

course, entirely overlooks the deterrent effect of the Credit Rules. The Government also intimates (brief, p. 15) that the Credit Committee might list security, although there were no F. T. or C. I. R. ratings and that the only credit information list in the record (R., p. 277) uses the code letters "C. I. R.", "F. T.", "Pndg." and "O. K.", and that the letters "O. K." are there defined as transfers where all contracts have been assumed, or the credit of the new owner is O. K., or is O. K. with security as recommended. It will be noted that the references are all to the Dallas Film Board of Trade. This being a very large territory, the Dallas practice differs in some respects from that in the other localities. Salesmen are permitted to secure applications during the ten-day period, although no definite action is taken on the application until the status is passed upon (R., p. 117). Transfers are marked C. I. R. from the beginning, meaning "credit information requested" (R., pp. 107, 113). Mr. Douglas testified that the Dallas Board interprets that to mean either "credit information requested" or "refused" (*ibid.*). When a theatre is marked "O. K." with security deposit recommended, the credit questionnaire has been completed and all requirements for establishing credit have been satisfied (R., p. 117). But the security provision is in this case a recommendation only (R., p. 116).

The Court asked Mr. Douglas certain questions (R., p. 100):

> "Q. The Government seems to assert that there was an intention of these parties to compel the assumption of the prior contracts; what have you to say about that?

"A. You can take most any of these cases and you will observe the deposit is usually a maximum of $50. In most cases there are $3,000 or $4,000 worth of contracts involved. I do not think that recommending a $50 deposit on a contract with a distributor would coerce the purchaser into assuming a $3,000 or $4,000 contract. It would be a lot better judgment and more sensible to place a $50 deposit with two or three exchanges rather than obligating himself to $3,000 or $4,000 worth of burdensome contracts, if they were burdensome."

In the Dallas territory, where there are 1,072 theatres and fifteen members of the Film Board of Trade (R., p. 90), not more than $1,000 is held by distributors from all the theatres in the territory as deposits on recommendations of the Credit Committee (R., pp. 102-103). The deposit is generally released before the contract is terminated (*ibid.*). This hardly seems to justify the Government's characterization of the deposits (brief, p. 25) as "an insurmountable burden to the average small exhibitor."

In the case of C. I. R. transfers, the fact that exhibitors were frequently given the alternative of putting up a $50 deposit, or assuming contracts amounting to $3,000 or $4,000 (R., p. 100) forbids the inference that the assumption of contracts was the primary or dominant motive behind the Credit Rules. On the contrary, what is shown is an application of Credit Rules to credit purposes without undue enhancement of the deposit called for.

The record shows that there were 294 transfers of theatres in the Dallas territory in 1928. The new owners in 107 cases did not assume the existing contracts. Of

these 107, 17 were reported as F. T., 13 of which were cleared during the year, so that only 4 remained on the F. T. list at the end of the year. While 40 or 50 refused to give information on the first request, most of them gave the information before the end of the year (R., p. 90). The fact is, one cannot read the testimony of Mr. Douglas (R., pp. 89-122) without being satisfied with the fairness shown by the Dallas Film Board of Trade and with the fact that the requirements were such only as might reasonably be expected in dealing with delinquents.

In any event, it should be noticed that the points made by the Government on this particular subject relate only in fact to the Dallas territory, as the practice differs there from that prevailing elsewhere (R., pp. 117, 127).

5. The actual application and effect of the Credit Rules in practice, and the absence of complaints, show the Rules to be fair and reasonable.

In operation the Rules have often been fairly employed as a basis for negotiation with a view to equitable adjustment of the interests of all concerned, and the results have been clearly beneficial to the industry. No exhibitor has complained, and no injury is shown either to individuals or to the general public. The District Court so found (R., p. 69).

It is a fair presumption (and the Court so held [R., p. 71]) that any one who purchases a going theatre must be aware that there are in existence contracts for the exhibition of pictures at that theatre which will be broken by the conveyance unless he assumes them. In fact, the act of purchasing a theatre without assuming contracts

falls but little short of a tortious interference with contractual rights. In most cases where the sale is made to the seller's wife or brother or close relative, or to one of his operators or his manager, it is perfectly obvious that the transferee is allowing herself or himself to be used for the purpose of assisting the seller in breaking his contractual obligations. A purchaser who takes no thought for the existing uncompleted contracts of the seller of which he has knowledge, but who repudiates them, cannot be heard to complain of rules whose purpose is to ascertain whether in fact the transfer has been made in good faith, or is a step in a scheme on the part of the exhibitor to avoid his contractual obligations.

It seems clear that there has been no suppression of competition. In fact, in the territory covered by the Dallas Film Board of Trade, "there are now about 200 theatres more than there were when the Credit Rules were adopted" (R., p. 109). In fact, in the country at large, according to Exhibit D, the number of theatres in 1928 had increased by more than 1,400 over those in 1927.

It is also significant that, in the words of the Opinion, "no one has complained except the Government. No injury to individual traders or to the public generally is disclosed" (R., p. 70). And Miss Foley, Secretary of the Omaha Film Board of Trade, testified (R., pp. 131-132):

> "I have not seen any hardship worked upon any exhibitor in our territory by reason of anything in the credit rules."

And see Cole, R., p. 122, quoted at p. 23, *supra*.

Failure of the Government to prove injury was properly accorded significance by the Court below. A similar attitude was taken by Judge Bondy in *United States* v. *Fur Dressers' & Fur Dyers' Association, Inc.*, 5 F. (2d) 869, 873 (S. D. N. Y., 1925), *supra*, p. 30. And it seems

clear that such an attitude has the sanction of this Court, as well. *United States* v. *United States Steel Corp.*, 251 U. S. 417, 448 (1920).

The Government says (brief, p. 16) that the Rules do not apply to the owners of newly constructed theatres, but, of course, the reason for this is that the evil intended to be reached by the Rules arose out of transfers of existing theatres and not out of the construction of new theatres. The Government also puts the case (brief, p. 16) that a new owner may be cleared even though he has a notoriously bad credit reputation and has not furnished the information requested by the Credit Committee. This, of course, is extreme and is only supported by an assumption by examining counsel (R., p. 128), not based on any actual case shown by the record.

By way of further illustration of the practical operation of the Credit Rules and of the type of case dealt with by the Credit Committee, we have set forth in an Appendix (*infra*, p. 58) a digest of some typical F. T. cases.

POINT IV.

The District Court properly held that there was no proof of the supplemental agreements described in the petition.

The Petition alleges that the members of the Film Boards of Trade, that is the branch managers of the distributors, entered into agreements which supplemented and exceeded the Credit Rules (R., p. 23). This allegation of the Petition is weakened by the further averment that the members entered into such supplemental agreements "*without the knowledge and against the general*

instructions of the defendant distributors and of the defendant association" (ibid.).

These alleged supplemental agreements were (*a*) to refuse to make new contracts unless the new owner assumed the performance of uncompleted contracts; (*b*) to retain on the Credit Information List the names of new owners who had not assumed uncompleted contracts; (*c*) to refuse to "spot book" prior to the Credit Committee's report; and (*d*) to require new owners to deposit security on every contract (R., p. 24).

The existence of these supplemental agreements was denied by each of the three secretaries who testified. Messrs. Douglas and Cole have attended all meetings of the Credit Committee since the Rules were adopted in January, 1926 (Douglas, R., p. 90; Cole, R., p. 123), and Miss Foley has attended all meetings since August, 1927 (R., p. 130).

Mr. Douglas made his denial specific in respect to each form of agreement (R., pp. 110-111). He also denied that there was any agreement between the members to coerce exhibitors to assume uncompleted contracts.

Mr. Cole testified to the same effect (R., pp. 124, 125). He also denied the existence of any agreement between the members of the Atlanta Board to coerce exhibitors to assume contracts. He said that the figures would substantiate his denial better than anything he could say. Only 25 per cent. of the rentals on uncompleted contracts were assumed by the new owner in the territory of the Atlanta Film Board of Trade. $154,000 of contracts were assumed as against $450,000 not assumed (R., p. 126).

Miss Foley testified that she had heard the testimony of Mr. Douglas and Mr. Cole about the alleged supplemental agreements, and that her "testimony is the same

as theirs" (R., p. 136). She said that there were no such supplemental agreements in her territory. There had been no conspiracy to coerce purchasers of theatres to assume uncompleted contracts (*ibid.*).

The force of the foregoing testimony was not overcome by the testimony that the Dallas Film Board of Trade (which was in many respects a law unto itself [R., p. 117])* recommended security in certain cases not strictly classifiable as F. T. or C. I. R. Mr. Douglas emphasized the fact that it was a "recommendation" only, which the distributors were free to act upon or not as they chose (R., p. 114); hence it

> "cannot be held to be an unlawful restraint upon commerce, even though in the ordinary course of business most sellers [distributors] would act on the information * * *". *Cement Manufacturers Assoc.* v. *United States*, 268 U. S. 588, 604 (1925), quoted in the Government brief, p. 29.

Incidentally, the eighteen instances of such "recommendations" listed on page 15 of the Government brief were culled from the files of the Dallas Film Board of Trade covering a period of two years and four months (R., pp. 182-227).

Mr. Douglas categorically denied (R., p. 110) the making in his territory of any supplemental agreements of the type alleged in the Petition.

The testimony amply supports the holding of the District Court (R., p. 69) that the allegations concerning the supplemental agreements were not sustained.

---

* "When a theatre is marked O. K. with security deposit recommended, the credit questionnaire has been completely filled out, and it satisfies all the requirements of establishing credit. Under those circumstances there is no provision in the rules, aside from fraudulent transfers, allowing that security to be required. That again is a practice adopted by the Dallas board. That practice of using the credit committee procedure and the credit information lists is one established individually by the Dallas Film Board of Trade" (R., p. 117; and see p. 49, *supra*).

Summary.

The real burden of the Government's contention seems to be that the distributors should have sat down and permitted fraudulent transfers to continue unabated with consequent heavy losses to themselves. Thus, the Government brief: "purchasers in many cases would *voluntarily* assume" (p. 38); "even where contracts were not assumed the distributors involved could place their films in other theatres" (p. 39); "taking the distributor group as a whole, the effect of non-assumption of contracts is largely a shifting of business among the distributors" etc. (p. 39)*; "some loss from failure to fulfill contracts is an element of every business" (p. 39); "they might merely have circulated among their members whatever information the Board secretaries might obtain" etc. (p. 39). We submit that when those commonly interested are faced with financial losses due to a definite evil, they may combine to require reasonable security for their fragile and valuable property before placing it in the hands of those who have shown their willingness to be parties to a fraud.

The Credit Rules were rightly upheld by the Court below because they are reasonable in their terms and operation, injure no one, have a predominantly ethical aspect and were a proper measure of protection against exhibitors whose aim was to evade their contractual obligations by colorable transfers of title to their theatres (Cf. Opinion, R., p. 66). Trade conditions have been improved and outstanding evils have been reduced. The Credit Rules, in short have promoted the integrity of

*See in this connection R., p. 130.

contractual relations; this being so, any attendant restraints were "incidental to this legitimate purpose, and therefore not unreasonable or unlawful" (Opinion, R., p. 71).

CONCLUSION.

The decree of the District Court should be affirmed.

Dated, New York, N. Y., October 18, 1930.

Respectfully submitted,

HENRY W. TAFT,
Counsel for Appellees,
40 Wall Street,
New York, N. Y.

JOHN W. DAVIS,
CORNELIUS W. WICKERSHAM,
PAXTON BLAIR,
ARTHUR L. FISK, JR.,
GABRIEL L. HESS,
of Counsel.

APPENDIX.

A Digest of Some Typical "Fraudulent Transfer" Cases.

(a) Atlanta.

Transfer of Ensley and Franklin Theatres in the Town of Ensley, Alabama.

This case concerns the transfer of two theatres in the town of Ensley, Alabama. The first theatre, the Franklin Theatre, was owned and operated by one Joe Steed, and had outstanding $18,588.50 worth of uncompleted contracts for the future exhibition of pictures. The second theatre, the Ensley Theatre, was owned and operated by one R. B. Wilbey, and had outstanding $12,010.75 worth of uncompleted contracts for the future exhibition of motion pictures. Steed and Wilbey conceived the idea of forming a corporation consisting of themselves to take over the operation of both theatres. This they proceeded to do, Wilbey becoming president of the new corporation and Steed the treasurer. The theatres were transferred to the new corporation, which filed a questionnaire with the credit committee of the Atlanta Film Board of Trade rejecting all contracts for both theatres. Mr. Wilbey appeared before the credit committee and agreed with the committee to see that the new corporation carried out, played and paid for the contracts of the Ensley Theatre, the one formerly operated by himself, these contracts as stated being in the amount of some $12,000. The pictures under these contracts were permitted to be shown at both theatres, although the contract itself permitted exhibition at the Ensley Theatre only, the distributors who held the contracts permitting this adjustment. Steed's contracts were not taken over, and the $18,000 involved were a total loss to the distributors concerned (R., pp. 123, 153-157, 164-168).

Appendix

The willingness of distributors to deal liberally with exhibitors even in this case is clearly shown by Mr. Cole's testimony as follows (R., p. 123):

> "Q. Did the distributors ask for the time being that the Ensley Theatres put up security as a condition to making new contracts?
>
> "A. Yes; it was placed on the fraudulent transfer list, or FT list, just for a day or two at a time and Wilbey would come over and assure us that he would get it all straightened out, and that he was going personally to see that his contract would be taken care of and they would lift these FT rulings and continue right on with the bookings—with the spot bookings—until it was personally approved by the credit committee, and they agreed. Mr. Wilbey is a pretty responsible man in that territory and operates a number of theatres. At the same time they knew this deal was very shady, but just on his assurance that he would see that the $12,000 worth of contracts were taken care of they thought it better to salvage those than to lose all of them.
>
> "Mr. Wilbey did not put up security at any time, and both theatres continued showing pictures during the period of this altercation."

Ritz Theatre, Tuscaloosa, Alabama.

One Francis operated the Ritz Theatre at Tuscaloosa, Alabama, under a lease. On the ground that he was not making any money he asked for and obtained reductions in the prices under various contracts. Thereafter Francis transferred his theatre to one King, who was in his employ in the capacity of projectionist. King thereupon proceeded to repudiate and reject all Francis' contracts. In spite of his claim that he had placed a considerable sum of money in the theatre, King refused to

come and appear before the credit committee of the Atlanta Film Board of Trade, although the expense involved in coming to Atlanta for such an appearance would have been approximately $10. Security was demanded on new contracts but King refused to comply, and ran his house on pictures obtained from a distributor not a member of the Film Board of Trade. Later the theatre changed hands again (R., pp. 123-124, 144, 147-148).

(b) Dallas.

Family Theatre, Houston, Texas.

The Family Theatre at Houston, Texas, was operated by one Gironard, who, at a time when he had quite a number of contracts outstanding, purported to transfer this theatre to one Hall; but the credit committee had reason to believe that Hall was merely the manager of the theatre for Gironard, Hall having designated himself in his letters as agent. He was also known to the credit committee as having previously signed contracts for a theatre that never materialized. Hall agreed to assume the former owner's contracts but later repudiated part and assumed only parts of the former owner's contracts, and obtained service on these contracts (R., pp. 96, 191-192).

Palace Theatre, Daingerfield, Texas.

The Palace Theatre is situated in Daingerfield, Texas, about 250 miles from Dallas. The theatre was owned and operated by the partnership of Newson & White. The theatre was apparently transferred from the partnership to one of the partners, Mr. Newson, who was to be the sole owner. But after the transfer he promptly repudiated the partnership contract. The credit com-

mittee thereupon recommended a $500 deposit on new contracts. At the time of the transfer the theatre was not actually open but Mr. Newson was planning to reopen the theatre. Later the theatre was taken over by another person whose status was approved (R., pp. 102, 216).

Voga Theatre, Voga, Texas.

The Voga Theatre was operated by one Yates, who had outstanding one contract covering some 48 feature pictures and 48 short subjects. There was an alleged transfer of this theatre to one "Farmer Jones", who turned out to be a fictitious person. The credit committee recommended a $50 deposit on new contracts. The transfer never materialized, the former owner closing his the..re and going for a while to California. He later returned and played out his contracts (R., pp. 103 and 217).

Riggs Theatre, Monahans, Texas.

The Riggs Theatre was owned by one Yates and was situated in Monahans, Texas, an oil town about 450 miles from Dallas. Mr. Yates had some contracts outstanding and was involved in some trouble in regard to them, and was in default on some arbitration awards. Yates transferred the theatre to one Estes, his brother-in-law, who proceeded to repudiate part of his transferor's contracts. The credit committee recommended a deposit on new contracts. However, prior to this recommendation two distributors had taken new contracts with Mr. Estes without a deposit, which contracts were fulfilled. This theatre changed hands several times subsequently, and was abandoned when the oil town "played out" (R., p. 103).

Rialto Theatre, Claude, Texas.

The Rialto Theatre was owned and operated by one J. M. Wise, who had $3,000 worth of uncompleted contracts outstanding when he purported to transfer the theatre to his sister-in-law, one Susie Gray. Miss Gray filed a questionnaire in which she did not state whether the theatre was owned or leased, and otherwise failed to return a complete questionnaire. She did, however, state in her questionnaire that she had had no previous experience in the motion picture business, whereas it developed that she had been in the business before and, that there was an uncomplied with arbitration award against her. She further stated that she would assume none of her brother-in-law's contracts. The credit committee recommended a $100 deposit on new contracts. Apparently the alleged transfer was not carried through, and the theatre continued receiving service. The next month this theatre was apparently transferred again, as one Mitchell was reported to be making its new contracts. Mitchell turned out to be house manager for one Snodgrass, the purchaser, who assumed none of Wise's contracts. Since Wise had attempted to make one fraudulent transfer, and since nothing was known of Snodgrass, except that he stated he was in the restaurant business, a $50 deposit was recommended on new contracts. Mr. Snodgrass placed this deposit with three distributors. After ninety days the recommendation was retracted and the deposits refunded (R., pp. 104, 220).

(c) Omaha.

Amusu Theatre, Casey, Iowa.

The Amusu Theatre was first operated by one Wahe, then sold to a man by the name of Valentine, who

did not assume any of Wahe's contracts. Wahe then formed a partnership with a man by the name of Skellinger and took the theatre back from Valentine. The theatre was then transferred by Wahe and Skellinger to one Mohnsen, all these transfers taking place within a period of a year and a half. Mohnsen returned a very incomplete questionnaire, leaving out all reference as to whether the theatre was leased or the length of time for which it was leased. Furthermore, he claimed that one of the outstanding contracts of the theatre had been signed by an incompetent by the name of Debolt; actual production of the contract, however, showed it to have been signed by Wahe and Skellinger. The matter was finally adjusted and the theatre cleared (R., pp. 135, 136, 263, 264).

*Lytton Theatre, Lytton, Iowa.**

The Lytton Theatre was owned and operated by a Mrs. Jones, who was succeeded by a Mr. Hull. Hull agreed to assume all of Mrs. Jones' outstanding and uncompleted contracts, which agreement was forwarded to the credit committee; but he later stated that he could not possibly carry out this agreement because of the large number of pictures under contract, claiming that when he agreed with Mrs. Jones to do so, he was unaware of the number involved. The distributors at his request cut down the number of pictures he was required to play so that he could play out his contract within the period of a year. This adjustment was made without any cost to Mr. Hull (R., pp. 136, 271, 273-276).

* This case is not a fraudulent transfer case, but furnishes a good example of the distributors' willingness to make suitable adjustments on contracts even where the new owner has agreed to assume the former owner's contracts. See also R., p. 97.

SUPREME COURT OF THE UNITED STATES.

No. 95.—October Term, 1930.

The United States of America, Appellant, *vs.* First National Pictures, Inc., et al.	Appeal from the District Court of the United States for the Southern District of New York.

[November 24, 1930.]

Mr. Justice McReynolds delivered the opinion of the Court.

The court below denied the relief sought by the United States. The parties are the same as those in No. 83, just decided—*Paramount Famous Lasky Corporation, et al* v. *The United States of America*—and the opinion there contains sufficient description of them, their business and operations.

In 1926 the Appellee Distributors caused each of the thirty-two Film Boards of Trade to adopt written rules for establishment and operation of a local credit committee. These Committees were promptly organized and have continued to function as required. The prescribed rules provide—

That to correct abuses and unfair practices the president shall appoint a credit committee of three members to investigate and report the names of all persons who have acquired, by purchase or transfer, theatres in the territory within which the Film Board operates. The secretary of the Film Board shall be secretary of the committee and to him sales and transfers of theatres shall be promptly reported. These shall be placed upon a "Credit information list" and copies furnished to all members of the Film Board for their confidential information. Upon receipt of such list each member shall advise the secretary concerning its existing contracts for exhibition of pictures at the listed theatre and shall state whether the transfer provided that the new owner should assume and complete outstanding contracts.

That immediately upon receiving information of the transfer of a theatre the secretary shall request the new owner to furnish within

five days references concerning his credit standing, etc., and to secure this information a prescribed form of questionnaire shall be sent out. The credit committee shall meet weekly to examine and report upon the credit standing of new owners and furnish a copy of their report to members as confidential information. If a new owner fails to respond to the questionnaire, this fact shall be noted upon the credit information list. Also the credit committee shall indicate on the list every sale or transfer of a theatre which upon investigation it concludes was made by the previous owner for the purpose of avoiding or being relieved of uncompleted contracts for exhibiting pictures at such theatre. There shall also be indicated opposite the name of each theatre listed (excepting those whose new owners have agreed to assume and complete all existing contracts entered into by the prior owners, and of which agreement notice has been given to or received by the credit committee) the amount of cash security, not exceeding $1,000., which in the judgment of the committee is a reasonable sum that members shall require to be deposited as security for the full and complete performance of each contract thereafter made and entered into for the exhibition of pictures at such theatre.

That no member of the Film Board shall enter into a contract for the exhibition of pictures at any theatre listed on the credit information list for a period of ten days from the date of the first appearance of such theatre upon the list nor thereafter unless the new owner or lessee of such theatre shall have paid in cash to such member with whom such owner or lessee desires to contract for pictures the amount of security specified on the credit information list. Certain contracts for "spot-booking", that is for a picture to be delivered in the immediate future, may be made within the ten day period and prior to the committee's report. The credit committee may from time to time remove from the credit information list the name of any theatre owned or operated by a new owner and thereafter members of the Film Board may contract with him.

That members upon demand of the credit committee shall furnish desired information, permit examination of books and records with respect to any exhibitor who has sold or transferred his theatre and has failed to provide for the assumption by the new owner of existing contracts. A member of the Film Board who violates any of these rules shall be subject to suspension or expulsion.

A copy of the "Questionnaire" is printed in the margin.* It asks for many particulars concerning the new owner or transferee of the transferred theatre and especially demands specification of

*Please answer each question, sign and return to—

CREDIT COMMITTEE

.....FILM BOARD OF TRADE

Address .....

1. Name of theatre.....
2. Street address..... City and State.....
   Population of city..... Seating capacity.....
   V Policy: Pictures ( ) Vaudeville ( ) Road Shows ( ).....
   Number of days open each week..... Time of first performance.....
   a. m.....p. m.
   What days do you have matinees..... Time of first performance.....
   Telephone No. of office.....; of residence.....
   Name of person, firm, or corporation, operating theatre.....
   .....
   If a corporation give corporate name.....
   Name of president.....
   Name of treasurer.....
   Name of secretary.....
   Name of general manager.....
   Is stock of corporation or a substantial amount thereof owned or held by another corporation?.....
If so, give name of corporation and names of officers and directors.....
.....
If partnership, give names of partners.....
.....
Who is authorized to enter into and sign contracts.....
.....
3. How will the contracts be signed.....
4. Is theatre owned or leased.....If leased, state expiration date of lease.....
5. Name of lessor.....If owned, state name of owner.....
6. On what date was theatre taken over.....
7. Place where and date of recording bill of sale.....
8. Admission prices .....
9. Condition of projection machines.....
10. Have you or your operator inspected them, if not, do you agree to have them inspected within thirty days.....
11. Model of machines.....Year.....
12. Name theaters heretofore conducted, stating location of each.....
    .....
13. If you have never been engaged in the exhibition of pictures, state previous business.....
14. Bank references.....
15. Other references.....
16. Specify contracts for film service made by previous owner:

Name of distributor	Date of contract	No. pictures unplayed
.....		
.....		
.....		
.....		
.....		

outstanding contracts for film service made by the previous owner and a declaration as to whether the new one has or will adopt them.

17. Specify contracts you have assumed.....
.....

18. If you have not assumed the previous owner's contracts, will you assume them?.....
.....
(If your answer to this question is "yes," fill out and sign the attached agreement of assumption.)

The undersigned represents and warrants that the answers to the foregoing questions are true and are made to induce the members of the above-named film board of trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at the above-named theater.

Signature.....
Owner Lessee (strike out one).

Dated.....19

Assumption of Contracts

.....19..

Know all men by these presents, that the undersigned.....
owner
lessee of the ..... Theatre, in consideration of one dollar lawful money of the United States in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations, hereby agrees to assume, carry out, and fully perform each of the contracts now existing between ..... and the following distributors:
(Name of previous owner)
.....
.....
.....
.....
.....
for the exhibition of pictures at said theatre from the above date.

Distributors	Date of contract	No. pictures unplayed	Class (features, comedies, news, other shorts)
.....			
.....			
.....			
.....			
.....			

.....
(New lessee New owner) (Strike out one)
.....Theatre
Address.....

Statement of financial condition

Statement of .....
Individual Corporation Partnership (strike out one)
Operating.....Theatre

To Credit Committee of the Film Board:

For the purpose of inducing the members of the film board of trade to contract with the undersigned owner (or lessee) for the exhibition of motion pictures at the ..... Theatre, I (or we) warrant and represent that the following is a true and correct statement of my (or our) financial condition on the ..... day of ....., 19.., and agree that in case any change occurs that materially reduces my (or our) ability to pay all claims and demands against me (or us) or materially in-

The definite point of attack in this proceeding is the agreement for the creation and operation of the Credit Committees and their use under prescribed rules to restrict freedom of sales by Distributors and of purchases by Exhibitors.

Ten Producers and Distributors of films, controlling 60% of the business, agreed to contract with Exhibitors only according to a Standard Form and then combined through thirty-two local Film Boards of Trade with other Distributors, who with themselves control 98% of the entire business. The Film Boards appoint Credit Committees and these operate under the Rules above outlined. The obvious purpose of the arrangement is to restrict the liberty of those who have representatives on the Film Boards and secure their concerted action for the purpose of coercing certain purchasers of theatres by excluding them from the opportunity to deal in a free and untrammelled market.

Reference to what has just been said in No. 83 and to the opinions in *Eastern States Lumber Assn.* v. *United States,* 234 U. S. 600, *United States* v. *American Oil Co.,* 262 U. S. 371, *Binderup* v. *Pathe Exchange,* 263 U. S. 291, and *Anderson* v. *Shipowners Assn.,* 272 U. S. 359, will suffice, we think, to show the challenged arrangement conflicts with the Sherman Act.

The court below erred in reaching a different conclusion and its decree must be reversed. The cause will be remanded for further proceedings in conformity with this opinion.

Reversed.

---

creases my (or our) liabilities or decreases my (or our) assets, I (or we) will forthwith notify you in writing to such effect.

ASSETS		LIABILITIES	
Cash on hand, and in bank		Notes payable	
Notes receivable		Money borrowed	
Real estate (how valued)		Accounts payable	
Furniture and fixtures.		Mortgages—real estate	
Screen, machines, chairs		Chattel trusts	
All other assets consisting of:		Mortgages on personalty and fixtures...	
.....		All other liabilities consisting of:	
.....		.....	
.....		.....	
Total.....		Total.....	

Net worth as of this date $.....

.....

Exhibitor.